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JAMES WILSON IN THE PHILADELPHIA CONVENTION.

THE work of James Wilson as a framer of the constitution seems not to have received its just recognition. The more careful historians who have worked over the period testify to his ability and influence; but their praise is general, not particular. No one has attempted to isolate him, to show with some definiteness what were his ideas on the more important problems that presented themselves in the organization of the new government, to discover what were his contributions to the wisdom and the statesmanship of the Philadelphia Convention. While it is true, indeed, that historians have given him passing commendation, his name has generally been linked with the names of other men far less deserving; and this argues lack of full appreciation. We are asked, for example, to admire the work of Gerry and Sherman and Franklin and Robert Morris and Dickinson and Randolph and Mason. Yet some of these men contributed little to the results of the convention; while others of them were at times obstacles in the way to a reasonable conclusion or advocates of the sheerest folly. If Wilson's work be closely examined, its greatness and worth will appear, and will place him above all but one or two men of the convention. Perhaps Madison alone can be called his equal in judgment and far-sighted wisdom. Certainly Wilson was one of the four men who bore the burden in the heat of the day — who fought with desperate and magnificent energy in the greatest controversy of the convention. But for Madison, King, Gouverneur

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Morris and Wilson, narrow, selfish particularism might have won the victory in the long battle that was waged between the friends of nationalism on the one hand, and those of contracted localism on the other. To the keen understanding, the sound judgment, the great debating power and the vigor of these four men do we owe it that a really national government was established. Wilson's part in this contest deserves attention and challenges admiration.

Although Wilson showed sense and judgment with regard to the details of the new government, petty forms and complicated devices seemed to have little attraction for him. His mind seemed by instinct to seize the essential, and to pass over the trivial and unimportant without friction or confusion. Thus it happens that, judging his work in the light of a century's experience, we see little we would find fault with. He took slight interest in mere mechanism, if the fundamental principles were comprehended and applied. For the work of the convention, therefore, the character of his mind especially adapted him. The constitution is not an instrument of detail and particularity, but is wisely general, enumerating powers but not defining them, recognizing the necessary basis of a national government and the suitable rights of the states. From Wilson's career it is plain that he was not one of those statesmen who master details, who work with promptness and decision for the accomplishment of palpable objects. Nor was he one of those statesmen who know men with unerring judgment and work through others keener and subtler than themselves to ends but dimly seen. Nor was he one of those who feel acutely the life of the state, and make a way for its progress because they feel within themselves the pulsation of its higher and better life. Something of this latter power he undoubtedly had in him; but his greatest talent was of a different nature. He was above all a political scientist: he had grasped firmly the teachings of the past so far as they disclosed the nature and organization of the state and the safest principles of judicious government. He was a student of history, and his study had brought him organized knowledge. He

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was not a master of the art of politics, but he knew with scientific accuracy the fundamentals of statecraft. He was suited above all else to share in the building of a new state and to labor as the architect of a new government. One who studies his words is deeply impressed with the folly of those who were striving for local advantage or seeking to build a state on the frail foundations of meagre knowledge and narrow experience, and realizes the force and influence of the men who paid reverence to history and contended in and out of season for the recognition of its soundest and deepest teachings. Especially clear, too, becomes the error of the modern commentators who derive the motive ideas of the Philadelphia Convention from foreign text-books on law or politics. The men of the convention, and Wilson above all, were not rote-learners: they did not absorb unquestioningly the lessons of Blackstone or of Montesquieu. They were themselves original seekers after truth, making their own inductions and extorting the principles of their science from the raw materials of history.

To appreciate the value of Wilson's work we need to call to mind the condition of the country and the evils which the convention was called upon to remedy. In one sense there is no need to rehearse the difficulties of the critical period. Every schoolboy is taught the failures of the dismal Confederation, is led to lament the awful spectacle of "a nation without a national government." But the form of such teaching has often obscured the plainest truth. Scholarly books that treat of the period seem to miss the essential and to dwell upon the accidents. The Articles of Confederation are held up to ridicule and abuse, and the finger of scorn is pointed at the impotent Congress as a mere pretense — a charlatan among governments. The main lesson gathered is that the central government ought to have had greater power — the right to collect tariff duties, to enforce treaties, to regulate interstate commerce and the like. Now this is the way that men commonly spoke in the midst of the trials of the time. Only the men of wisdom detected the real meaning of the situation. They saw, as we ought to see, that the Confederation was a

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failure simply because actual conditions made a confederation an impossibility. In declaring that each state retained its sovereignty, the Articles of "the league of friendship" spoke the language of arrant falsehood. Legal sovereignty the presuming states might assume, and sovereign they would be on paper; but there remained the fundamental fact — which gave the lie to all fictions of law — that there was, and could be, but one ultimate source of political power in America, and that was a united people. When Daniel Shays and his band arose in Massachusetts to demand new tables and to wreak a surly vengeance on the courts and lawyers, the startled people turned instinctively for help to the nation. For the nation existed, and the need of the time was its recognition by the organization of a national state. Only when political and legal forms tallied with the fundamental fact of society could justice be established or domestic tranquillity ensured. Reformers who saw merely the surface clamored for greater power in Congress. But a congress with greater power, if still the agent of sovereign states, would have continued to be out of joint with the overruling fact. What was needed was, not a juggling with powers and authorities, not an adding of complexity to confusion, but simply the organization of a state on the broadest and most rational basis. It is not strange that men sought to tinker the Confederation. There are always quacks with pet nostrums, and physicians who treat the symptoms, but do not cure the disease. The remarkable thing is that there were in 1787 so many men who saw the need of a bold operation to remove the root of the whole evil.

The great need of the time, then, was the recognition of the fact that there was an American people; that there must be one government rising from them and over them; that this government must come in contact with its own citizens; that state selfishness and greed, the bane of the old order, must be checked by making the new government sufficient unto itself — in short, that there must be provided an organization for a pure, national state, broad in its purposes and broad in its foundation, with an adequate means of expressing its sovereign

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will. It was because Wilson saw all this with clearness that his work in the convention was of the highest order. He had no patience with half measures or mild palliatives. In the discussions of every detail he bore the fundamentals in mind.

The work of the convention is easily divisible into three distinct parts. It was necessary to decide: first, what should be the nature and character of the new organization, — whether it should be a *government* or the agent of sovereign states, whether, in fact, there should be one state or another more complex confederation of states; second, what should be the powers confided to the government; third, what should be its mechanism and form. Of these the first is plainly the most important: were the decision on this point wrong, all other wisdom would be folly. In the decision of this first great question Wilson took a keen interest. The principle was practically involved in all discussions on the basis of representation. Were the states equally represented in Congress, the groundwork of the new government would be states and not persons. Only representation proportioned to population would give a just and reasonable foundation for a real national assembly: on any other principle, whatever might be the powers bestowed upon the central authority, it would be inherently weak and defective, because there would be no just recognition of the only pure and safe source of power — the people of the United States.

An examination of the debates in the convention will show what part Wilson took in the solution of this all-important problem. It will be remembered that the basis of the convention's work was a plan introduced by Randolph of Virginia. The day after this plan was presented a fundamental resolution was adopted, declaring "that a *national* government ought to be established consisting of a *supreme* legislative, executive and judiciary." The succeeding day, after it had been resolved that the national legislature ought to consist of two branches, a discussion arose on the method of election. Here there were difficulties. Many feared the people as the source of power; and others seem to have feared encroachments on the power and influence of their respective states,

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although as yet the so-called small-state party, bent on preserving the equality among the members of the Union, had not been formed. Wilson was from the outset at once democratic and national:

> He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Later in this same day he opposed the proposition that "the second branch of the national legislature ought to be chosen by the first branch out of persons nominated by the state legislatures," holding that the second branch ought to be independent of both the first branch and the state legislatures. "He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition." It was characteristic of him to be sure of the principle, but not to take interest in the mechanism.

We have thus in embryo at the very beginning of the convention three ideas which Wilson later elaborated and never abandoned: the national authority must be strong and high, but its source must be the people; the people were to be trusted, and on their confidence the new government must rest; the government was to be over men and to have as few points of contact as possible with the state governments. These propositions, all closely related, are maxims of profoundest wisdom. Because the convention realized their force and embodied them in the constitution, its work was successful.

Bent on building the new government upon the surest foundation, Wilson insisted that the constitution must be ratified by popular conventions, not by the legislatures of the states. So

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important did this principle seem to him that he declared, early in the history of the convention, that if a plurality of states were disposed "to confederate anew on better principles," they ought not to allow their purpose "to be defeated by the inconsiderate or selfish opposition of a few states." This hint Madison tells us was "probably meant *in terrorem* to the smaller states of New Jersey and Delaware": it is one of the first indications that a small-state party was forming. This frank, straightforward announcement that the proper principles must be observed, even though complete union be not immediately secured, was typical of Wilson's state of mind. Throughout he was one of the few unbending stalwarts of the assembly.

As the convention continued its work, difficulties increased rather than diminished. At first it had seemed probable that the fact of nationality would be fully recognized, and that a national government would be erected in conformity with this overruling idea; but as the days went by, the jealousies of the small states increased, and their opposition became more keen and bitter. No peace was possible until the great principle involved in the proper basis of representation was irrevocably established. Wilson returned time and again to his main assertion, that the government must be founded on the people, and must not come into contact with state officers. At first he dwelt chiefly on the idea that the government ought to possess the "*force*" and the "*mind* or *sense* of the people at large" — that all antagonism between state governments, on the one hand, and the national government, on the other, must be carefully avoided by making the people the electors, and by drawing the power of the central authority from the real source of political energy. But when the small-state party began to demand from the convention a recognition of the states as the basis of the new government, seeking in fact to build up another confederation, more complicated in its mechanism, but still in essence a "league of friendship," then Wilson's full national spirit was aroused, and in common with Madison and King, and others less powerful in debate, he entered lustily into the contest. Patterson of New Jersey, on June 9, came out flatly in favor of a confederation.

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"A confederacy," he declared, "supposes sovereignty in the members composing it, and sovereignty supposes equality. New Jersey will never confederate on the plan before the committee. She would be swallowed up. She had rather submit to a monarch, to a despot, than to such a fate." Wilson, answering him, "entered elaborately," Madison tells us, "into the defense of proportional representation, stating as his first position that as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people different numbers of representatives." "If New Jersey will not part with her sovereignty," he exclaimed in closing, "it is vain to talk of government." Time and again this discussion arose; and Wilson was ever ready to battle for the national principle.

On June 29, after the convention had been in session a month, it was finally determined that the rule of suffrage in the first branch of Congress should not recognize the equality of the states. The vote stood six states to four, with one (Maryland) divided. This result was uncomfortably close. Immediately after this decision the small-state men entered upon the attack again, now demanding equal representation in the Senate. Wilson's speech in opposition was a masterpiece of sound and sensible argument. It was one of the strongest speeches delivered in those four months of constant debate. It was not loaded with aphorisms about the nature of man or the evil tendencies of democratic society, or with such other matters as filled many of the speeches of the time. It was plain, practical sense.

> Can we forget [said he] for whom we are forming a government? Is it for *men*, or for the imaginary beings called *states*? Will our constituents be satisfied with metaphysical distinctions? . . . The rule of suffrage ought, on every principle, to be the same in the second as in the first branch. If the government be not laid on this foundation it can be neither solid nor lasting. Any other principle will be local, confined and temporary. This will expand with the expansion, and grow with the growth of the United States. . . . It is all a mere illusion of names. We talk of states till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy?

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But, excited as he was, justice and wisdom did not forsake him. He was not foolish enough to desire the destruction of the states. "He thought the states necessary and valuable parts of a good system."

It must be noticed that the plan of proportional representation in the Senate seemed to accentuate the idea of nationality even more than in the case of the House; for if the Senate was to be a small body, and its members popularly elected, *state boundaries could not be regarded.*[1] Each small state could not have even one member, for that would make the number too large. The people of Delaware must be joined to a part of those of Pennsylvania to form a senatorial district. This points to the conclusion that the nationalists were not simply struggling for the due weight and influence of their respective states, but were seeking the broadest popular basis for the new government.

Wilson was now ready, however, to offer a reasonable compromise.

> If the smallest states be allowed one [senator], and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest states will contain a hundred thousand souls at least. Let there be, then, one Senator in each for every hundred thousand souls, and let the states not having that number of inhabitants be allowed one.

King and Madison, who with Wilson were the unyielding advocates of national representation, intimated that they were willing to accept this compromise; but it was not adopted.

After the convention had evenly divided on the question of allowing equal representation in the Senate, a grand committee,

[1] If I understand Curtis's History of the Constitution (vol. ii, pp. 224, 225) aright, he does not interpret as I have done here the arguments and desires of the leading large-state men. They never clearly stated in so many words their desire to disregard state boundaries in the elections. It is barely possible that they did not force themselves to the limit of seeing exactly what their ideas meant. But Madison's footnotes seem to leave no doubt that the situation was as it is stated in the text. — Elliot's Debates, vol. v, pp. 168, 240, footnotes; Wilson's and King's remarks, p. 38; Wilson's remarks, pp. 125, 266; King's remarks, p. 280; Madison's remarks, p. 280. See also Writings of Rufus King, pp. 596, 597.

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composed of one member from each state, was selected and directed to consider the whole matter. Wilson opposed this committee, on the ground that a decision would surely be rendered against the large states. The result proved him right. The committee was made up without a single one of the strong and unyielding men from the large-state side. Not King[1] but Gerry, not Madison but Mason, not Wilson but Franklin — who could not forget diplomacy — represented the largest states, from which had come the strongest opposition to localism. One would fain have the history of the choice of that committee. When the advocates of proportional representation were at least equal in number with the particularistic party, how did it happen that such a committee was selected? The large-state men were in some way outgeneraled and outwitted in the choice of this extraordinary body. As one studies these debates, and strives to see through the meagre printed page into the passions and emotions of that great battle where the stake seemed to be a nation's life, he feels strongly drawn to the fearless, uncompromising men who stood forth defiantly as the representatives of generous nationalism, as unwavering opponents of the forces of selfish localism and dissolution. It may be that, without the yielding spirit of men like Franklin, the smaller states would have refused to participate further in the work of the convention. But what would have been the result had there been no men who were thoroughly fearless and consistent, thoroughly appreciative of the greatest of the fundamental facts, thoroughly devoted to America, and not swaddled in provincialism? Morris spoke in his bold, cynical way too near the truth when he said: "The states had many representatives on the floor. Few, he feared, were to be deemed the representatives of America."

[1] It may seem strange that Rufus King is here mentioned and not others. King did not speak much, but, when he spoke, what he said was full of sense. I find few speeches in the debates more sensible than those he delivered on June 30 and July 14. He was close by the side of Wilson in his argument. Hamilton was not present at the time, being absent from June 29 to August 13. Morris, a perfect colossus in debate, left the convention a few days after it began its work, and did not return till July 2. It will be found that these men were the most straightforward, logical and unyielding advocates of nationalism.

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The grand committee reported a compromise granting to the lower branch of the national legislature the right to initiate all bills for raising or appropriating money, and conceding to the small states an equal vote with the large states in the Senate. This formed the basis for discussion for some time, but not till the middle of July was the vexed question settled. The vote was five to four. Massachusetts, whose vote would naturally have been with the large states, thus making a tie, was divided. "Lost by the vote of Massachusetts," wrote King mournfully in his minutes.[1] One can picture the disgust and distress of the leaders of the national party. They were angry, combative, but finally, it seems, disheartened. The party considered in caucus what should be done. One faction, in which we feel sure were Wilson and Morris at least, advocated continued opposition to the small-state plans; but a yielding disposition now prevailed with many, and the caucus reached no decision.

We may inquire whether Wilson's opposition was the part of wisdom or of factious obstinacy. It may without hesitation be asserted that the Senate has never stood as the special champion or defender of the small states, for no controversy requiring such an attitude has arisen in our history. The sensible men in the convention showed time and again that a combination of the large against the small states was a mere figment of the imagination. Some saw with rare insight the really dangerous antithesis which lay in the fact that the interests of the North and of the South were different. It is sometimes asserted that the composition of the Senate, as it was finally determined upon, was wise, because it has given prominence to the federal principle, and because states have been protected against encroachments and their rights preserved. The fallacy of this assertion rests in a fancied but unreal dualism. The citizens of the states and the citizens of the United States are the same persons, and no destruction of state privileges is possible

[1] King's exact words are: "This vote was taken, and to my mortification, by the vote of Massachusetts, lost on the 14th of July."—Writings of Rufus King, vol. i, p. 616.

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unless the state citizens are acquiescent. It cannot be asserted that the Senate has ever stood specially as a bulwark against the forces of centralization. Again, it has been argued that the fears of the national party were as groundless as those of the localists, inasmuch as neither the equality of representation in the Senate nor the method of election has endangered the national government. To this it may be answered that, had the senators been elected as Wilson proposed, it is doubtful if even John C. Calhoun could have had the temerity to bring forward his treaty theory of the constitution: the really national character of the national government would from the outset have appeared in a clearer and less mistakable light. In the midst of the distress, uncertainty, blind confusion and perplexity of the critical period, Wilson was a wise statesman in advocating the clearest possible announcement that the new government was built on men and for men, not on states or for states.

In Wilson's speech of June 25, he rose to the fullest height of statesmanship in disclosing the argument for proportional representation:

> He was opposed to an election by the state legislatures. In explaining his reasons it was necessary to observe the twofold relations in which the people would stand, — first, as citizens of the general government, and secondly as citizens of their particular state. The general government was meant for them in the first capacity; the state governments in the second. Both governments were derived from the people, both meant for the people; both, therefore, ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their state governments were applicable to their relation to the general government; and in forming the latter we ought to proceed by abstracting as much as possible from the idea of the state governments. With respect to the province and object of the general government, they should be considered as having no existence. The election of the second branch by the legislatures will introduce and cherish local interests and local prejudices. The general government is not an assemblage of states, but of individuals, for certain political purposes; it is not meant for the states, but for the individuals composing them. The *individuals*, therefore, not the *states*, ought to be represented in it.

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This speech is given an unusually large space in King's minutes of the convention; and there this idea of double citizenship is given with perhaps greater clearness than in the foregoing words quoted from the "Madison Papers." Wilson in these sentences gave the fundamental idea of the federal state; and because it was he who did present these thoughts so conspicuously, he deserves unstinted praise. This double allegiance and double obedience owed by each citizen to two governments, each distinct from the other, and each supreme in its own field, is the most striking and the most important feature of the political organization of our country. Because this principle has been so completely worked out, political scientists of to-day may point to the United States as the model federal state. It is the surest and purest basis for federalism; and it represents the greatest of our achievements in statecraft. It is wonderful that Wilson should have grasped this principle so firmly and insisted on it so strenuously, when the men around him were striving eagerly for some local advantage or, if wise and generous, were too often lost in the contemplation of the mere mechanism of government. Seventy years later, at another fateful period in our history, statesmen saw but dimly this great fundamental fact in our political system. James Buchanan and Jeremiah C. Black, wrestling in agony of spirit with the problems of secession, begat together the mysteries of that wonderful message, which declared that secession was illegal, but that there was no legal means to prevent it, because the national government could not coerce a state. They apparently did not comprehend these elementary facts which Wilson so clearly stated. Our system does not contemplate antagonism between governments; but the national government is a government over men — can demand obedience from them, and is under obligations to enforce its decrees upon them. Even as late as the Slaughter House cases, Judge Miller found it necessary to elaborate at length this fundamental principle, because it had been beclouded by discussion. "It is quite clear then," said he, "that there is a citizenship of the United States and a citizenship of a state which are distinct from each other, and

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which depend upon different characteristics or circumstances in the individual." [1]

The limits of this paper will not allow a minute account of the opinions of Wilson on all the problems that were presented to the convention for solution. As has been said, he was not greatly interested in forms, if fundamental principles were observed; and he did not, therefore, speak at great length when the mechanism of the government was under discussion. Two or three ideas for which he stood, however, deserve special attention.

He had from the outset the clearest and most sensible ideas regarding the executive. He wished to have the chief magistracy confided to a single person. "All know," he said, "that a single magistrate is not a king." With keen insight into practical politics he objected to a council to assist the president. "It oftener serves to cover than prevent malpractices," was his trenchant criticism. Anxious to separate the executive from the congress, he pointed out the fact that legislative tyranny was possible, and that the president must have means of self-defense. He did not seem to see so clearly the desirability of separating the executive and judicial departments: in common with some of the wisest men of the convention, he advocated the union of the judges with the president in the privilege or duty of vetoing laws. In this he and Madison and Gouverneur Morris were at one; and were, as we know, finally overruled — and wisely. On the method of electing the president, Wilson stood for a time almost alone, and had to fight his battle single-handed. It is well known that the manner of choosing the president gave rise to some of the greatest difficulties with which the convention wrestled. Device after device was proposed, and various plans were temporarily adopted. Wilson was from the beginning in favor of popular election. The reactionary undemocratic character of the convention is strikingly illustrated by the hesitancy with which he first gave utterance to this idea. "He was almost unwilling," he said, "to declare the mode which he wished to take place, being

[1] 16 Wallace, 36, 72.

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apprehensive that it might appear chimerical." But he stated his preference for an election by the people, and later offered a resolution providing for the division of the states into electoral districts whose voters should choose presidential electors. To the very end he advocated the mediate or immediate election by the people. At one time Pennsylvania alone voted for popular election. Though defeated at first, Wilson returned time and again to his original propositions; and after sifting and tentatively adopting other methods, the convention was finally forced to accept a system which made possible, at least, the mediate election of the president by the people, although the state legislatures might assume the power.

All that Wilson did to establish the government on a safe foundation, or to arrange aright its forms and methods of operation, gave evidence of a wise and catholic spirit; but more significant still was his appreciation of the life and soul of the American state. In this respect he was head and shoulders above his great colleague Morris, and above even Madison himself. Wilson was thoroughly democratic: all that he did for nationalism he did likewise for democracy. The convention was deeply impressed with the extravagances of the populace: what has since been called the Federalistic syllogism — democracy, anarchy, monarchy — seems to have ruled, even then, the thoughts of many. The whole assembly was more or less imbued with reactionary dread of popular fickleness and folly. Not only was this true of natural aristocrats like Morris, and of men, like Hamilton, whose talent was for governing; but even Madison and Gerry, who were later found within the Jeffersonian fold, were now apprehensive of democratic intemperance. "The evils we experience flow from the excess of democracy," was one of Gerry's shallow opinions. Madison wished to guard against the "levelling spirit," symptoms of which he saw already appearing. Wilson, on the contrary, was given over to the democratic faith. He was not patronizing to the populace or condescending, — quite the reverse. Filled with the democracy of the next century, he considered himself the servant of the people, and sought to minister to them. He desired a national

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government because the people were ready for it; and he trusted their sense and justice.

He could not persuade himself [said he at one time] that the state governments and sovereignties were so much the idols of the people, or a national government so obnoxious to them, as some suppose. . . . Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of the governments? No, sir. It is from the national councils that relief is expected. For these reasons he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan, that it is to be submitted to *them* and not to the *legislatures* for ratification.

He was in his whole spirit at variance with Morris, "who on all occasions," said Madison sharply, "had inculcated the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest."

Wilson's nationalism and democracy speak continually together, but never more wisely and well than in defense of the Western people. To their growth in political rights and privileges it was gravely proposed to place an impassable boundary, because, forsooth, to quote Morris, "the busy haunts of men, not the remote wilderness, was [*sic*] the proper school of political talents," and because "the back members are always averse to the best measures,"[1] and because of other reasons begotten of sectional jealousy and aristocratic myopia. Wilson swept all such narrow dread aside.

Conceiving that all men, wherever placed, have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people, wherever found, ought in all questions to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no.

[1] Remarks of Morris, July 11 (see also those of July 5–10); remarks of Gerry, July 14. It is interesting to notice that this fear of the West actually influenced the committee appointed to consider the numerical basis of representation. — See Gorham's remarks, July 9.

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There was perhaps no great danger that the convention would be guilty of such unmitigated folly and narrow sectionalism as Morris and Gerry advocated, but the West owes to Wilson a debt of gratitude for propounding these democratic propositions so clearly. It is a very curious and interesting fact that on the very day, July 13, when Wilson so skilfully attacked this policy of exclusive tide-water statesmanship, the despised Congress of the Confederation immortalized itself by passing the Ordinance of 1787, one of whose chief glories is the recognition of the equality of the Western people with the inhabitants of the old thirteen states.

Wilson's democracy so thoroughly underlay all his actions that it has been impossible to call attention to any considerable portion of his work without showing the domination of this spirit. His words would have seemed natural had they been spoken at the beginning of the nineteenth century or later, for his democracy was precocious. It was Jeffersonian, but it was free from the nonsense with which the great founder of the democratic party and the seer of modern Americanism was then loading his correspondence. Wilson could not

> agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of representation.

This was sublimated Jeffersonism, the doctrines of the Virginia politician and philosopher in their purest state. Not government, Wilson seems to say, not wealth, not even the peace and safety and well being of the individual are the highest aims and wants of man; but progress, development, growth to higher and better status for each man, who, after all is said, must be the unit of the state and society. Yet he was free from Jeffersonian nonsense. He made use of no aphorisms about a little rebellion being a good thing now and then, or about "refreshing the tree of liberty with the blood of patriots and tyrants, its natural manure." Moreover, he did

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not, like Jefferson, confuse state sovereignty and particularism with democracy. He even appreciated the nature of the democratic state more fully than Jefferson; for it is certainly no attack upon the principles of democracy to recognize the homogeneity of the nation, to give to a government, really emanating from the people, power, dignity and vigor, to give to the governmental machinery efficiency in executing the people's will. The broad national democracy of the Jacksonian era was thus foreshadowed by this Scotch philosopher in the Philadelphia Convention; and he contributed not a little to bring it about, that in later years the state was thoroughly imbued with the democratic spirit, and the government acutely sensitive to the popular will.

When Wilson saw so clearly the absolute necessity that the government should spring from the people as the legitimate source of political authority, it may at first seem strange that he did not assert emphatically the doctrine taught by many modern political scientists. Why did he not assert more positively that the constitution was law; that it issued from the authority which is the sole source of law; that the establishing power was the people of the United States, not the people of thirteen separate sovereignties; that union into a single being came before the sanction which gave the constitution the force of law; that the will of the sovereignty of a new state was expressed in the act of ratifying and establishing the constitution, though in performing this act the people were geographically divided? The reason is plain enough: he did not so assert because entirely different conceptions with regard to the origin of law held sway in his mind. In this he was not peculiar: the compact theory of government was dominant everywhere. If government with power could arise from agreement among individuals, so could it spring from agreement between bodies of individuals. The idea that government received its authority from the consent of the governed was a pet idea with Wilson. Not only in the convention did he give utterance to that formula; but, in his law lectures delivered in 1791, he stated the proposition over and over again, and gloried in the fact that

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America had realized and adopted it. He attacked Blackstone in a succession of lectures, with intent to disprove the assertion that law is a rule of action laid down by a *superior*. Why this conception of the origin of government in contract was all powerful in America at that time is easy of explanation, but a full discussion would go beyond the limits of this paper. It is sufficient to say that the colonists were the political offspring of the seventeenth century; that to them the Revolution of 1688 meant more by example than it did, perchance, even to the people of England; and that the arguments and facts leading up to the separation from the mother country tended to emphasize the doctrine of natural rights and the theory that society and government had their beginnings in agreement.

In his learned discussion in the case of Chisholm *vs.* Georgia, delivered in 1793, Wilson comes near to a clear enunciation of the doctrine that the people of the United States established the constitution. In fact, he does so state, though the idea of divided sovereignty holds him.

> As a judge of this court [he says], I know and can decide upon the knowledge that the citizens of Georgia, when they acted upon the large scale of the Union, as a part of the "People of the United States," did not surrender the supreme or sovereign power to that state; but as to the purposes of the Union retained to themselves.

The language is not exceedingly clear and explicit, but he comes, at least, to an assertion of the existence of the "People of the United States." This assertion, however, gleams out from pages loaded with arguments on behalf of the contract origin of government. Thus, he says:

> The only reason, I believe, why a free man is bound by human laws is that he binds himself. . . . If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do likewise?

Wilson's whole state of mind on this subject is very illuminating. If he, the broad, generous nationalist and democrat, was ruled by these conceptions, need we expect to discover anywhere the assertion that the new government was the

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creature of the new state, and that the constitution as law received its sanction from the indivisible will of an indivisible sovereign? A study of his words shows beyond peradventure how impossible it was for such ideas of modern political science to germinate in the soil of 1787.

It may seem strange that a man who did so much has received so little general recognition. Even the men of the convention and the statesmen of the time scarcely mention his name. Madison's correspondence gives no indication of Wilson's greatness. Washington speaks of him only once or twice; but, with his usual fairness and insight, asserts that he was one of the ablest men of the convention. This reticence with regard to a man of such conspicuous ability can, however, be partly explained. He seems not to have won men strongly by his personality. He does not seem to have made and retained personal friends among the men whose correspondence we have. His real kindliness of disposition seems to shine out so clearly from the pages of his lectures on law, that one hesitates to attribute this lack of friends to any inherent unlovableness on his part; but he must have been a curious, angular being, given to repellant learning and possessed of prolix and voluble wisdom. The shortness of his public career after the organization of the new government may account for the partial oblivion that has crept over his name. His career was blighted by financial troubles brought on by speculation in wild lands; and he died almost an outcast, in mortification and sorrow, ten years after the adoption of the constitution, which bears so plainly the marks of his hands.

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FOUR GERMAN JURISTS. III.

BRUNS, WINDSCHEID, JHERING, GNEIST.

VI.

BEFORE Jhering opened his attack upon abstract jurisprudence, he had acquired a reputation that extended far beyond the boundaries of the fatherland by his great work upon the *Spirit of the Roman Law in the Different Stages of its Development.* As a study of the evolution of the Roman law, the work may be regarded as a product of the impulse to historical investigation given by Savigny, and in the catalogues of the booksellers it is usually ranged among the works on Roman legal history; but in its spirit and method this book represented, as we have already noted,[1] a reaction against the purely national view of legal evolution held by Savigny and his school, and it bore little resemblance, in its general plan or in its details, to any previous history of the Roman law.

It emphasized the universal side of legal evolution, and found the significance of the Roman law in the great place which that law occupies in the legal history of the world. It discarded the periods commonly recognized by writers on Roman legal history, and substituted three "stages": the pre-Roman or Indo-European, the national Roman, and the universal Roman.[2] In the first volume (Introduction and Book I), Jhering undertook to show what the Romans brought with them into their separate national life. In the remainder of the work he meant to show what they made of their heritage, and with what rich interest they gave it back to the world. In the three additional volumes which he completed he carried out but a small portion of the original scheme. He did not even finish his second "book" on the "specific Roman system" (*ius civile*). Its first "section" (*Abschnitt*), on the "general characteristics of the

[1] POLITICAL SCIENCE QUARTERLY, X, 669, 675–678.
[2] Geist des römischen Rechts, I, 81–85.

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system," extended through the whole of the second and third volumes [1] and nearly through the fourth volume.[2] Its second "section," which was to deal with the special rights recognized in the older private law, was carried only so far as was necessary to complete the discussion of the general conception of a right,[3] and there the work stopped. As we have already seen,[4] the examination of this special question carried him out of legal history into legal philosophy and eventually into sociology. The *Spirit of the Roman Law* was left unfinished that he might write his *Teleology of Law*, and this, in its turn, so grew upon his hands that it was never finished.

The proposed third book of the *Spirit of the Roman Law*, which was to have treated of the development, by the Romans, of a general system of private law for the entire ancient world (*ius gentium*), and in which the characteristics of this universal law were to have been examined, was accordingly never begun — a fact which no admirers of Jhering can more keenly regret than those whose privilege it was to hear his lectures upon Roman legal history at Göttingen, and who therefore know, in part at least, how fresh and suggestive would have been his treatment of this period.

The *Spirit of the Roman Law* is a work so much better known than any of his other writings (except, perhaps, his *Struggle for Law*), and so much has been written about it, that it is hardly needful to do more than indicate in what respects it marked an epoch in legal historiography. It was one of the first important attempts to apply to the study of legal evolution the method of comparison. In describing the "original elements" of the Roman law he thus gave the world a treatise on primitive law in general. In describing the Roman conceptions of liberty and equality, and the way in which these were realized in the national law, the comparison with other systems was so employed as to make this second volume an important contribution to the philosophy of law. The discussion, in the

[1] Designated as Part II, Divs. 1 and 2.
[2] Part III, Div. 1.
[3] *Cf.* POLITICAL SCIENCE QUARTERLY, X, 691, 692.
[4] *Ibid.*, XI, 290.

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following volumes, of the technique of the Roman law and the methods of the early Roman jurists broadened, in like manner, into a discussion of the function and the methods of all technical jurisprudence. The problems which he set before himself in his *Teleology* are not more universal, nor are they treated in any broader way, than those which engrossed him in the earlier work.

The point of view from which the work was written and the method employed make it unique among histories of the Roman law. All that is peculiarly national in the Roman law — all that is not found in other systems and cannot be utilized for comparison — had for Jhering but a secondary interest. Numerous facts that are set forth in the briefest compendiums of Roman legal history are therefore not even alluded to in these four volumes. These facts appear in the ordinary compendium because they facilitate the comprehension of the law books of Justinian; they were ignored by Jhering because the matters they illuminate are not matters of universal human interest. The ordinary legal historian, as Jhering himself said, regards history as the handmaid of dogmatics.[1] Jhering's mode of writing legal history, as Windscheid indicated years afterwards in his inaugural address as rector of Leipzig University, takes the subject out of legal science in the strict and usual sense, and makes it culture-history.

It is of interest to compare Jhering's work in primitive law in the first volume of the *Spirit* with the independent and nearly contemporaneous work of Henry Sumner Maine. Both of these men used the comparative method, and both wrote from the point of view of the social historian rather than from that of the legal historian. Both worked with a narrower basis of induction — with less knowledge of primitive law — than their successors in the same field, and the theories of each have been largely modified by later investigations; but both possessed a literary gift, a charm of style, that won for them

[1] Geist des römischen Rechts, I, 59, note. *Cf.* Entwicklungsgeschichte des römischen Rechts (1894), Einleitung, p. 9: legal history is "the Cinderella in the house of the law, tolerated there only because she carries wood and water for the household."

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a wider circle of readers than any of their successors have yet obtained.

Of early Roman law Maine knew something, but far less than did Jhering. Of Hindoo law Jhering knew far less than did Maine. Of English law Jhering knew little: I do not think that he read English with any ease. But through the labors of the Germanists Jhering had at his command a knowledge of early Teutonic law, of which the English law is but a transplanted shoot, that far outweighed Maine's advantage in his knowledge of early English law. In reality, then, the only advantage that Maine had over Jhering was his greater knowledge of the laws of India. And it may be seriously questioned whether, for the study of Indo-European beginnings, this was not really a disadvantage. Maine clearly believed that the customs and conceptions revealed in the oldest literature of India were, if not precisely primitive, at least more primitive and closer to the common starting-point of the Indo-European peoples than the earliest known customs and conceptions of the Teutons or Slavs. We are inclined to think to-day that the reverse is true — that the social relations of the Hindoos, at the moment at which their institutions first become clear to us, had developed along lines largely foreign to the oldest Aryan life; and that their civilization had become far more complex and artificial than that of the wandering ancestors of the great European nations. It was the influence of the Hindoo law that led Maine to assert the really primitive character of that household organization which he found in India and also in early Rome — an assertion now questioned by the majority of investigators — and to develop the entire political organization of the Indo-European peoples, the whole sacerdotal system, the administration of criminal and civil justice and the resultant formulation of criminal and civil law, gradually and smoothly, without break or jar of innovation, from the one fact of the household authority of the *paterfamilias*.

Jhering apparently assumed the primitive character of *manus*-marriage, agnatic relationship and *patria potestas*, — certainly, that these institutions were firmly established when the sepa-

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rate national existence of the Romans began,[1]— but he ascribed no such wide-reaching results as did Maine to the headship of the primitive house. To Jhering nothing in the earliest Roman state was modeled on the family save the *gens*. The *curiae* were military divisions constructed by the king. Kingship was not an outgrowth of family or clan, but a new thing superimposed upon the *gentes* by stress of foreign war. Kingship had built the new state of the royal period upon the partial wreck of the gentile state. Criminal law, to Jhering, began as lynch law: it was the vengeance taken by the whole people for an injury to the whole people. In its further development king and priests coöperated. The king first punished infractions of military discipline, and became gradually a keeper of the peace, because internal peace was necessary for successful foreign war. The priests slew the wrongdoer or drove him out of the city when his wrong was regarded as a sin. They slew or expelled him because otherwise the wrath of the gods would be visited upon the whole people. Over ordinary private disputes neither king nor priest, in Jhering's opinion, had originally any jurisdiction. The wronged party, or the wronged household, righted itself by self-help. If the wrong was obvious, if the right invaded was clear, self-help was regularly effective, because the wronged party had the sympathy and support of the community. Where the wrong was questionable because the right was unclear, self-help was inadequate. It was necessary, in such cases, that all doubt should be dissipated. At this point the civil jurisdiction of the king or the priest came in, but not at once, nor because of any original right of king or priest to interfere. There were various methods by which the parties settled their own disputes. One of these was arbitration; and out of the practice of referring disputes to king or priest grew gradually the right of priest and king to exercise jurisdiction over disputants.

This last point is perhaps doubtful; but that Jhering's picture of early society is, as a whole, far truer than Maine's, will hardly

[1] Bernhöft, Staat und Recht der römischen Königszeit (Stuttgart, 1882), believes that these were patrician institutions, not originally shared by the plebeians.

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be questioned by any one who has followed the later investigations in this field; and where the conjectures of the one writer or the other have been neither substantiated nor disproved, Jhering's theories seem to me to be at least better working hypotheses than Maine's.

As regards the power of the two writers to attain and formulate generalizations of the widest sort — to grasp and state the laws of legal evolution itself — Jhering was unquestionably superior. Maine's most famous single generalization, that the progress of human society is from status to contract, is but a partial expression of the rule laid down by Jhering, that law begins as a system of one-sided and unlimited powers, and gradually becomes a system of jural relations with limited powers and definite duties on each side.

Jhering's greater success in reconstructing the remote past of European civilization was partly due to the fact that early German customs were really more primitive than those indicated in the oldest literature of India. But it was also due in large part to an extraordinarily quick and sympathetic imagination. He thought himself or *felt* himself back into primitive life until it all became as real to him as the life of a little German university town in the nineteenth century under a wise and kindly bureaucracy. It may be questioned whether the earlier conditions, as they took body in his fancy, did not grow more attractive to him than those by which he was surrounded. It is certain, I think, that if he had never depicted, first to himself and then to his readers, the beauties of self-help as he did in the first volume of his *Spirit*, he would never have written the *Struggle for Law*.

In the *Spirit*, the evolution of law is regarded, primarily at least, as a psychological process. To comprehend it, the student must reconstruct for himself not merely the social environment but also the social mind of the people and period with which he is concerned. And this Jhering continually strove to do. Other students of legal history have made use of myths, language, symbols, *etc.*, to help them in the reconstruction of early institutions, but few have used these aids just as

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Jhering did. He has put his method in a sentence. He declares that "the unuttered thoughts" that underlie a legal institution

have not infrequently obtained a veiled and mysterious but pregnant expression in myths, in etymology or in symbols. *At times the genius of the people makes a confession in the dreaming state that we should never have lured from it in its waking moments.*[1]

In opposition to many legal historians, however, Jhering was not inclined to regard all legal development, even in primitive society, as an unconscious process. Even primitive men may agree, from motives of policy, to establish a novel institution or to observe a new rule. We have seen that in some matters in which Maine assumed evolution without conscious innovation, Jhering assumed changes which, if his explanation be true, must have been in large degree reflective.

It is interesting, again, to compare Jhering's explanation of early Roman institutions with those given by another brilliant and suggestive writer, Fustel de Coulanges. In *The Ancient City*, religion is treated as the creator of the whole legal order. Institutions and customs appear to be produced by religious beliefs. Now Jhering in no wise underrated, I think, the extraordinary influence of religion in early law; but to him religion was obviously a power that sanctions rather than a power that creates. Institutions come into existence, rules are established, because they are of social advantage. Once established, they come to be regarded as divine; and standing under the protection of the gods, they enjoy the tremendous sanction of religious fear. Religious ideas may easily affect the form of legal institutions, but rarely their substance. Religious ideas may modify the operation of a rule, and may often keep it alive after the social reason which justified it has ceased to exist; but religion alone has rarely created important rules of conduct, nor does religion originally endorse such rules without regard to their social utility. The gods are not so unreasonable.[2]

[1] Geist des römischen Rechts, I, 46.

[2] In his Vorgeschichte der Indoeuropäer, Jhering devoted several pages (64–71) to a criticism of the theories of Fustel de Coulanges. It is, of course, in the

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In the remaining portions of the *Spirit of the Roman Law*, in which Jhering dealt with the specific national law of Rome as partially formulated in the Twelve Tables and as developed by the older Republican jurists, less use was made of the comparative method. The legal system that he most needed for purposes of comparison, the legal system that bears the closest relation in its spirit and in its methods to the Roman *ius civile*, is the English common law before it was modified by the equitable jurisdiction of the English chancellors. What little Jhering knew of this law had shown him its similarity to the Roman national law — a similarity that is less of substance than of method, and is due to the fact that the two systems represented the same stage of legal evolution. Jhering felt, and was never weary of declaring, that the hard-headed, unimaginative, technical English common-lawyers were far more like the jurists of the Roman republic than are the modern civilians of continental Europe. But he knew too little of the English law to make much use of it. When his work shall be translated into English, it is devoutly to be hoped that the translation may be made by some one familiar with English legal history, and may be copiously annotated with references to the English common law.

When the subject permitted it, however, — when, for example, he was discussing the general problems of legal equality and personal liberty, as a prelude to an examination of the solutions which these problems found in the older Roman law; and when he was considering the value of technical forms of action and rigid forms of contract *etc.*, before describing the forms of the *ius civile*, — Jhering drew constantly upon modern European law; and even in the description of the Roman institutions and forms, modern law, if not directly available for illustrative purposes, was utilized for purposes of contrast.

In speaking of Jhering's change of attitude between 1857 and 1860 — a change which he himself described as an *Um-*

family organization that the connection between religion (ancestor-worship) and law is closest; and even here, according to Jhering, "the *sacra* do not determine the constitution of the family; on the contrary, the latter determines the former."

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schwung — and of his new zeal, manifested after 1860, for "practical" jurisprudence, I have already indicated, in a previous paper,[1] that Jhering's earlier work was by no means so unpractical as his own descriptions of his conversion imply. Throughout the *Spirit of the Roman Law*, from the discussion of the "physiology" of law in the first volume to the paragraphs on "juristic economy" in the last,[2] there is constant insistence upon the practical purpose and the practical operation of legal institutions and rules — upon the relation of law to life. What Professor Max Müller has said of Jhering's work in legal history is as true of the first volume of the *Spirit of the Roman Law*, published in 1852, as of the work upon the prehistoric institutions of the Indo-Europeans, published after Jhering's death.

> It was the leading principle of all his brilliant researches to discover in everything that has become formal its original substance, in what seems unmeaning its true purpose, in what is irrational its original *raison d'être*.[3]

And in the later volumes of the *Spirit* there are whole chapters, notably those upon legal forms, that might have been written for the *Teleology of Law*.

When the last installment of the *Spirit* was published, in 1865, Jhering had become engrossed in his polemic against abstract jurisprudence, and for many years he published but one other work upon legal history. This was *The Element of Fault in Roman Private Law*.[4] It is a study of the mode in which society gradually differentiates the malicious from the accidental injury, the willful invasion of a right from the honest interference of the person who believes himself to be in the right. As in the *Spirit*, the method of treatment is comparative: various systems of primitive law are examined to show that early society punishes the overt act without regard to the mental attitude of the actor. It is a study, further, of

[1] Political Science Quarterly, X, 687, 688.

[2] Geist des römischen Rechts, I, 48–58; IV, 236–301.

[3] *Cosmopolis*, September, 1896.

[4] Das Schuldmoment im römischen Privatrecht (1867). Reprinted in Vermischte Schriften juristischen Inhalts (1879).

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the gradual elaboration and refinement, in the Roman law, of the conception of fault, down to the final differentiation of malice from negligence, and of gross from ordinary negligence. Incidentally, it is an important contribution to the history of remedies, showing the priority of actions of tort in many relations that are ultimately regarded as contractual.[1] It should be added, as a supplement, to any translation that may be made of the *Spirit*. It is, in fact, a chapter of the unfinished third part of that work.

In the *Chats of a Romanist*, published in 1880, Jhering returned, as we have already noted,[2] to the field of Roman legal history; and in his *Possessory Intention* (1889) there are two chapters, the seventh and the eighth, that are purely historical[3] and that rank with the best parts of the *Spirit*. But through all the later years of his life it was the completion of the *Teleology* rather than the continuation of his historical work that Jhering had really at heart.[4] He had undertaken, however, to write the history of the Roman law for Binding's *Systematic Handbook of German Jurisprudence*,[5] and after the completion of his *Possessory Intention* he addressed himself, at the age of seventy-one, to the fulfillment of this promise. It was his intention to begin, as in the *Spirit of the Roman Law*, with a description of the Indo-European institutions which the ancestors of the Romans brought with them into Italy, but this was to be a mere sketch, much briefer than the first book of the *Spirit*. Like every other task that Jhering took in hand, this grew rapidly to unforeseen proportions. Nearly forty years had elapsed since the first volume of the *Spirit* was written, more than twenty since the last edition of that volume was printed. Philological research had thrown much new light upon the civilization of the primitive Aryans. The common heritage of the Indo-Europeans had shrunk under investigation: the

[1] Vermischte Schriften, pp. 187 *et seq*.

[2] POLITICAL SCIENCE QUARTERLY, XI, 306, 307.

[3] *Ibid*., pp. 285, 286.

[4] Vorgeschichte der Indoeuropäer, Vorwort des Herausgebers.

[5] "Systematic Library" would be a more descriptive title, since the plan provides for forty-seven volumes by twenty-eight different jurists.

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Aryans had been thrown back upon a lower plane of social development than had been previously assigned them. Many institutions and customs that seem common to all the European members of the family were obviously developed after their separation from the original stock. What then were the conditions under which these changes were wrought — changes that have differentiated the European man from his Asiatic kinsman? Such was the question that primarily forced itself upon Jhering's mind. But then came further questions. What were the influences that differentiated the Greeks from the Romans? What were the influences that differentiated these nations from the other peoples of the European branch, and gave them a lead of more than a thousand years in the march of civilization? Was it simply the different character of the countries in which each people settled — the influence of topography, climate, *etc.*? Or was it the earlier contact of the Greeks and Italians with the civilized peoples whom they found on the other side of the Mediterranean — the Egyptians and the Phœnicians? What was the origin and what the character of the Semitic civilization? The result of all these queries, which it was impossible for a scholar of Jhering's temperament to brush aside, was, as his literary executor, Victor Ehrenberg, tells us,[1] that he devoted the last two years of his life (1890–92) to the study of the Babylonian civilization, and that the very last thing that he wrote was a criticism of Renan's explanation of the difference between the Aryan and the Semite.[2]

Of the promised history of Roman law there were found among Jhering's papers only the beginnings — an introduction on the task and method of legal historiography, and a chapter on the organization of the early Roman household. These were published under the title which Jhering had selected, *History of the Evolution of the Roman Law*.[3] In his description of the Roman household, as in all his writings upon Roman history, there is something new. In this case it is his identification of

[1] Vorgeschichte der Indoeuropäer, Vorwort des Herausgebers.
[2] *Ibid.*, pp. 288–305.
[3] Entwicklungsgeschichte des römischen Rechts (1894).

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familia, in the oldest texts, with *res mancipi*, and *pecunia* with *res nec mancipi*. The introduction is of special interest: it gives Jhering's latest views not only as regards the way in which legal history should be written, but as regards the way in which law itself is evolved. Legal history, he says, should not be merely descriptive; it should not content itself with telling what happened, what changes occurred; it should discover the reason, the "why," of the facts described, and the forces that underlie and determine the changes. Nor should legal history content itself with this alone: it should show the causal relation between antecedent and subsequent facts, how changes begot other changes, — it should be a history of the evolution of law. As such, legal history has a right to exist for itself, as an independent science. It should emancipate itself from the idea of practical utility to the lawyer.

In seeking to discover the influences which make and modify law, the historian should turn his attention first to the facts of social life. He will find that all law is begotten by social necessities. These necessities are first perceived by the most enlightened members of the community, and it is through their influence upon the mass that new institutions are established, new rules recognized. Law is made, even in early society, by the conscious action of the natural leaders among men, as a path is broken through the wilderness. The line of conduct which they have laid out is followed by the mass and becomes customary, as the path opened by the pioneer becomes a trodden way.

The theory of Savigny and his followers that law is an emanation of the popular mind, an expression of the popular sense of right,[1] is no explanation of the genesis of law. It is an abandonment of the attempt to discover any explanation. Moreover, the theory has no warrant in history. The popular sense of right is not anterior to law: it is begotten of law. Even the most advanced thinkers regularly regard that which

[1] Sense of right (*Rechtsgefühl*) should not be confounded by the English reader with moral sense (*das sittliche Gefühl*). It is the sense of right in those matters with which law has to do; it is the sense of justice or of equity, the jural instinct.

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is legal in their day as rightful, — Plato himself so regarded slavery, — and the masses are incapable of any other view. If at any time the popular sense of right seems to emancipate itself from law and to produce changes in the law, — which only happens when civilization and law have reached a relatively high stage of development, — what occurs is usually this: a few men, who stand above their fellows, have discerned social needs or interests to which the people are blind. These few gradually open the eyes of a majority of the people, or at least of a number sufficient to secure a change in the law; but it is not until the change has been made and the new law has long been established that the feeling of its justice becomes universal. This is the history, for example, of the abolition of slavery, of the abandonment of torture in criminal procedure, of the disappearance from the statute books of laws against witchcraft.

When this is not true, when a new sense of right appears to develop and a change of the law is demanded on grounds of right, we notice that the demand comes from a special class, — that the cause of the demand is an interest, an injury to be avoided or an advantage to be secured; and that the feeling that the demand is just is really derived from the existing law. When the peasant demanded protection against animals preserved for the chase, he asked only that the protection which the law already gave to property should not be withheld from his property. When inventors and authors demanded protection, they asked only that the right of the laborer to the product of his labor, already recognized in the case of others, should be recognized in theirs also.

If, then, the popular sense of justice is derived from the established legal order, it is absurd, Jhering argues, to make that sense the creator of the legal order.

Against the doctrine of the unconscious growth of law, I for my part assert, to express it for the nonce in all bluntness, the doctrine of its conscious making. The law is not an efflux of the sense of right, discharging its creative function naïvely under obscure impulse — that mysterious process which would cut off (and deliver the legal historian from) further investigation ; it is, on the contrary, the work

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of human purpose and calculation, exerting themselves in every stage of social development to find what is suitable. The history of law is the history of human thought in reference to the practical realization of the conditions of existence of the human community. In this sense all the law on earth has been *made*, and if it seems to have grown of itself, it is because in many instances insight into the making is denied us.[1]

In examining Jhering's first historical work we noted the beginning of a reaction against Savigny's theory of the unconscious development of legal custom,[2] and here we have the opposite theory set forth, as Jhering himself says, "in all bluntness." It will be observed that there are open links in the chain of argument. We may admit that the general sense of justice is commonly in accord with the law, that a different and more advanced sense of justice is rarely to be found even among the best and wisest men, that law influences through education the sense of justice, that the child "inhales," as Jhering says, the spirit of the law; but after making all these concessions we are not obliged to admit that the sense of justice is altogether the product of the law. With an equally careful choice of illustrations it would be easy to construct an equally plausible argument for the opposite contention. The truth seems to be that the sense of justice and the law, developing side by side, exercise a reflex influence each upon the other, that each is partly the product and partly the producer of the other; and this truth Jhering himself has set forth in his *Teleology*. In the development of the sense of justice, he says, "the objective and the subjective, the internal and the external, stand in the closest relation of reflex influence, each reciprocally conditioning and furthering the other."[3]

It will be noted also that in asserting that law is not the product of the general sense of justice, but the product of social interests, Jhering has treated the latter supposition as necessarily excluding the former, and has assumed that if law be the

[1] Entwicklungsgeschichte des römischen Rechts, Einleitung, p. 28.

[2] Above, p. 27. Also in Zweck im Recht. See POLITICAL SCIENCE QUARTERLY, XI, 305, 306.

[3] Zweck im Recht, I, 379.

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product of social interests it must be the product of conscious purpose, of calculation. But it is possible to maintain that the general sense of justice is itself the product of social interests, keenly felt without being consciously formulated. And in fact this is a theory of the evolution of the sense of right which Jhering himself held, and which he constantly applied both in his historical and philosophical writings. In his *Teleology* it is not only the sense of right in jural relations that is thus accounted for, but also the sense of right in matters of morality, and even the sense of propriety in social intercourse.[1]

Such self-contradictions are not infrequent with Jhering, and he himself in a characteristic passage of his *Jest and Earnest* explains and, we may almost say, justifies them:

> But, you ask, do I seriously mean this? Honestly, no. When it is a question of doing justice to the different sides of one and the same institution, it is my habit to think myself into the side which I am at the moment treating with a complete, deliberate and conscious one-sidedness — to fall in love with it, I might say, as if it were the only side worth considering. When the other sides have their turn, I act in the same way; their predecessor is then wholly forgotten, as is not uncommon when it is a question of falling in love; and so I am sure that none of them will receive less than its due.[2]

The self-imposed task which had drawn Jhering away from his promised history of Roman law, the examination of the beginnings of Indo-European and Semitic civilization, had been brought, at the moment of his death, much nearer to completion; and the *Prehistoric Development of the Indo-Europeans*,[3] which his executor published before the fragment of the *History of the Evolution of the Roman Law* was given to the world, makes a good-sized volume. The first book treats of the Aryans in their original home and of the grade of civilization which they had attained; the third, fourth and fifth books deal respectively with their exodus, their wanderings and their "second home." These books are either completed or so far

[1] POLITICAL SCIENCE QUARTERLY, XI, 291 *et seq.*
[2] Scherz und Ernst in der Jurisprudenz, p. 187.
[3] Vorgeschichte der Indoeuropäer, Leipzig, 1894.

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completed as clearly to indicate the author's conclusions. The second book, which describes the civilization developed at Babylon and its transmission to the Mediterranean peoples, is also practically completed, and is nearly as long as all the others. Only the last section of this book, which was to set forth and compare the racial characteristics of the Aryans and the Semites, is unfinished. The sixth and seventh books, which were to explain the origin of and the differences between the European nations, are entirely wanting.

What are Jhering's conclusions — or hypotheses — on all these matters, and how were they reached? To me, at least, the first question is the less interesting of the two. Jhering regards the Aryans as a purely pastoral people, without knowledge of agriculture, of architecture or of the working of metals. As they were an inland people — Jhering holds to the theory that they lived on the northern slopes of the Himalayas in the modern Hindoo-Koosh — and as they were secluded by high mountain ranges from intercourse with other peoples, they were also ignorant of navigation and had developed no commerce. The Babylonians, on the other hand, had developed agriculture, architecture and manufactures some 3500 years before the Christian era. They had ships not only upon their great rivers, but on the Indian Ocean.

The Aryans had the patriarchal type of household : if at any very early period they had lived under the system of mother-right, they had outgrown it before the beginning of the migrations. They had reached no political organization higher than that of the tribe. The Babylonians, however, owing to their invention of bricks and to the consequent development of architecture and of city life, had reached a high stage of political organization.

The Aryan law was extremely rudimentary. From the juristic point of view the Aryans had no law, for with them law, morals and religion were wholly undifferentiated. The Babylonians, on the other hand, had a highly developed law, particularly as regarded commercial transactions. Of their law merchant, Jhering says:

> The Babylonian legal documents enable us to construct a clear

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picture of their commercial and monetary transactions. It yields in no respect to that displayed to us by the Roman law at its highest point of development in the first centuries of the Empire. I know no legal concept, no legal act of that system that does not find its counterpart among the Babylonians. In addition to those that are a matter of course, — sale, in which we find the Roman rule that the risk passes to the vendee with the conclusion of the contract, and hiring, in which subhiring also appears, and loan at interest, — there are found in the Babylonian law interest for default, conventional penalty, assignment of claims and assumption of liability, the order to pay, set-off, releases, commission on purchase, the contract of partnership, the contract recognizing debt and the abstract[1] promise to pay, suretyship and pledge, *antichresis* even and the pledging of pledges; and there occur transactions of a subtlety that would do credit to the trickiest modern usurer.[2]

Through its commerce the influence of Babylon extended eastward to India and westward to the Mediterranean. It was from Babylon that the Egyptians and the Phœnicians derived their civilization.

Increase of population drove repeated swarms of Aryans from their Asiatic home. In their wanderings they developed the type of military organization with which all the European nations started, and the military leadership which grew into the later European kingship. On the march was also developed that peculiar type of priesthood which we find in ancient Rome — priests who are experts in certain matters of especial moment to the migrating hordes. A further result of the migration was the development of monogamy. The chief result, however, was a gradual metamorphosis of racial character. Each exodus implied the selection of the most enterprising and courageous: centuries of migration secured the survival of the

[1] "Abstract," because the reason (*causa*) for the promise is disregarded and the defenses admissible in the case of ordinary contracts are excluded. The abstract contract of the Roman law was the *stipulatio*. The abstract contract of the English common law was the promise under seal. The chief abstract promises of modern law occur in the case of negotiable instruments.

[2] Vorgeschichte der Indoeuropäer, pp. 257, 258. Jhering also ascribes to the Babylonians the invention of *foenus nauticum*, the maritime loan ("bottomry bond") in which the claim of the lender perishes with the ship, and in which the rate of interest is correspondingly high (*pretium periculi*). — *Ibid.*, pp. 242 *et seq.*

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fittest, and transformed the indolent and unpractical Aryan into the energetic and matter-of-fact European.

The repeated migrations left no Aryans between the original home and the plains of modern Russia. If any tarried, they were unable to maintain themselves. The first resting-place, the "second home" of the wanderers, was in southern Russia and Bessarabia. Here they lived for centuries, and here they learned from the earlier inhabitants the art of tilling the soil. The conquered aborigines were not reduced to slavery; serfdom was invented. The use of manure was not yet known, and therefore in the course of centuries new exoduses became necessary. Then the work of natural selection began afresh, with the result of differentiating Greeks, Latins, Celts, Germans, *etc.*, from the Slavs, who remained in the "second home," and of whom, as compared with the other European nations, Jhering had a very poor opinion. What were the influences that differentiated these other European nations, was to have been set forth in the unwritten sixth book. We have hints that the explanation was to have been found partly in the position, soil and climate of their final abodes, partly in their earlier or later contact with the Semitic civilization of the Mediterranean. It was Jhering's theory that all differences in national type are due, in the last analysis, to external conditions and influences. This he termed the theory of "historical causality."

What are the data on which Jhering based this daring reconstruction of the forgotten beginnings of civilization? As regards Babylon, we have the bricks with their inscriptions.[1] In that city the brick took the place of wood, metal, parchment or papyrus as writing material. Myths, legends and history were made eternal by fire; contracts were made binding by burning them. The permanence and the comparative worthlessness of the material have preserved the inscriptions. These Jhering used with a certain independence. He could not control the translations given by the Assyriologists, but he could interpret them. A historical document is open to the interpretation of

[1] The collection of which Jhering makes most use is that of Oppert et Ménant, Documents juridiques de l'Assyrie et de Chaldée (Paris, 1877).

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every historian. A legal document is more easily interpreted by a jurist than by a philologist; and if the jurist be also a legal historian, familiar with the various stages of legal evolution, his interpretation carries greater weight than that of the philologist. But Jhering went behind the Babylonian civilization at the period of the inscriptions, and endeavored to explain its genesis. His starting-point was the character of the country. Its great alluvial plains were destitute of stone and scantly furnished with wood. The Aryans, who had plenty of wood, never got beyond it. With the Babylonians, necessity was the mother of an all-important invention, that of the brick. The great navigable rivers led to another invention, that of the ship. From the brick and the ship Jhering deduced the entire Babylonian civilization. His construction is, of course, wholly hypothetical. His hypotheses are sometimes fanciful, usually plausible, often almost convincing. In every case he ended by convincing himself at least. It may have been so; it must have been so; it was so — is a sequence that fairly represents his mental process. That it all was as he had pictured it, he was at the last so thoroughly assured as to declare that Babylonian history — by which term he designated his own hypothetical reconstruction of that history — was of especial interest and value because it so perfectly exemplified the theory of "historical causality,"[1] — this theory being the initial hypothesis upon which the whole reconstruction was based.

In the rest of his journey into *Vorgeschichte* — in visiting the first and second homes of the ancestors of the Europeans and in following their migrations — Jhering has nothing beneath his feet that is nearly so solid as the bricks of Babylon. The data are words, symbols, rites, customs, institutions; the evidence, as lawyers say, is circumstantial, that is, the proof is inferential. As in the *Spirit of the Roman Law*, he utilizes the results attained by the philologists; and Professor Max Müller tells us that the authorities upon which Jhering has chiefly relied are good authorities.[2] As in the *Spirit*, he has

[1] Vorgeschichte der Indoeuropäer, pp. 270, 271.
[2] Article cited above (*Cosmopolis*, September, 1896).

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utilized institutional material to corroborate, interpret, qualify and supplement the material furnished by the philologists. He has made far more use than in the earlier work of religious institutions, rites and symbols. A large part of the book is devoted to a study of Roman religious antiquities, in which he finds reminiscences of the exodus from the Asiatic home and reproductions of the customs of the migratory period. In none of his writings has he made more fascinating use of the historical imagination than in his explanation of the *ver sacrum*,[1] of the priestly colleges and of the auspices.[2] He explains what seems inexplicable; he accounts for things that all other students of Roman antiquities have dismissed as irrational superstitions; and as he accounts for them, they become in their origin completely rational.

Far more clearly than in his earlier books is here revealed his theory of the relation of religion to custom. Religious faith does not create customs: these are originally expressions of social utilities. But old customs become hallowed by time, and they are preserved as religious observances long after their reason for existence has disappeared. They are "superstitions" in what is perhaps the strict etymological meaning of the word, that is, things left over. For the historian of civilization religious forms have thus the same worth that fossils possess for the biologist.

Whatever opinion be held of the value of Jhering's *Indo-Europeans*, no one will deny that it is an extraordinary work for a septuagenarian to conceive and so nearly to execute. That a man of so advanced an age should have attacked such problems, that he should have brought to their solution such quickness and fecundity of imagination, that, at the very last, he should have thrown himself with such energy into a field of investigation so remote from all his previous studies as Assyriology — all this bears witness to an exceptional intellectual vitality. Jhering was of those whom the gods love, for, though full of years, he yet died young.

[1] Vorgeschichte der Indoeuropäer, pp. 309 *et seq.*
[2] *Ibid.*, pp. 425 *et seq.*

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In our review of Jhering's life work we have seen him dropping one task after another, and leaving each unfinished; hurrying from legal history into legal philosophy, and from legal philosophy into sociology; taking up legal history again at the close of his life, only again to abandon it and to devote his last energies to the history of civilization. And yet there was a single impulse behind all his efforts and a continuity in all his work. What interested him above all things, what occupied him always, from whatever side the problem was approached, was the evolution of law as an integral part of civilization. And his work is in no proper sense unfinished; he has found a solution for his problem; law is explained from its crudest beginnings to its latest and most refined development as the expression of social utilities. The thought is, for our time, one of fundamental importance. Developed as Jhering developed it, particularly in his *Teleology*, it contains the corrective for the aberrations of socialistic theory; for it derives from socialistic premises the justification of individualism.

VII.

The legal reader (if any legal reader has had the patience to follow me thus far) may begin to wonder whether, in Germany, jurisprudence means simply legal history and legal philosophy; and whether, because of the national yearning to get to the bottom of every subject, however abysmal its depths may be, the tendency of German legal history and philosophy is to eliminate the legal element and to become mere subdivisions of universal history and of pure philosophy. If any such impression has been created, it is doubtless because, in these essays, I have thus far emphasized the more general tendencies of German legal science, and have dwelt especially upon that side of the work of our four jurists which seems to me of most general interest. It is of Jhering, too, that I have thus far had most to say; and Jhering made more frequent and more extended excursions into neighboring fields than any of his fellow jurists. Jhering himself, however, was primarily a jurist, and devoted

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the greater part of his restless energy to labors which even an American lawyer would recognize as legal. The work of Windscheid and of Bruns was wholly legal. That of Gneist, as we shall see, was partly political, but in the main legal. All these men — apart from their work as instructors, of which I shall speak later — made important contributions to the better comprehension of existing law, and each of them influenced, in greater or less measure, the development of the new law which German imperial legislation has produced during the past thirty years.

To vindicate Jhering's character as a practical lawyer, it should first be noted that he was consulted in sundry cases of great importance, and wrote admirable opinions.[1] His *Year Books* were established for the scientific discussion of modern legal problems; and to this journal, during the thirty-five years of his editorship, he made constant and important contributions. In its pages first appeared, as we have already noted, his treatise on the protection of possession. Among the topics that he discussed were *periculum rei* in sale, joint obligations, limitations on property rights in the interest of neighbors, and protection against the malicious invasion of rights — all of them sufficiently practical themes. These and other contributions to the *Year Books* are reprinted in his three volumes of *Collected Essays*.

In these essays it was his constant effort to find the principles that underlie the positive rules of the law. In the heat of the battle against abstract jurisprudence he often spoke as if principles were the bane of the law; and at the close of his life, in the introduction to his unfinished *History of the Evolution of the Roman Law*, he wrote:

> A rude age has one priceless advantage over an age of higher development: *it is not yet acquainted with any principles.*[2]

But in this instance, as in so many others, Jhering's utterances must be read in the light of his immediate purpose.

[1] Some of the more important will be found in his Vermischte Schriften (1879) and Gesammelte Aufsätze (1881–86).

[2] Entwicklungsgeschichte des römischen Rechts, p. 17. The italics are Jhering's.

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Like all good preachers, he had most to say about the sins to which his hearers were prone, and to enhance their blackness he was capable of blanching those opposite sins to which they had no leaning. Had he lived in a land where the average lawyer cared only for the rule, and not for the reason; where fictions and presumptions were commonly accepted as final legal truths and estoppel stopped all scientific inquiry, he would have denounced such disregard of principles as vehemently as he denounced the ideolatry of the Germans. In his *Possessory Intention* he remarks that "the nature of the case is invoked only by him who does not really know how to justify his views";[1] and in another passage he declares that the establishment of a legal presumption, in order to escape the objectionable results of a recognized principle,

> is, in my eyes, simply escaping from an *impasse* into which we have strayed by our own fault by climbing over roofs or walls. When we find ourselves in an *impasse*, it proves that we have missed the right road, and the moral is that we must turn back and try to find it.[2]

Jhering's real quarrel was with that purely deductive jurisprudence which treats as absolute and final truths the principles heretofore commonly recognized. "Principles," he said, "are not written in the stars, nor have they fallen from the skies; man makes them for himself."[3] If they do not correspond to the existing rules of positive law, or if rules deduced from them do not subserve the interests of society, the principles, he held, must be remade; and Jhering was in no wise disposed to shirk this task. Among his contributions to constructive jurisprudence, that which has obtained most general recognition is his theory of the "negative interest of contract."[4]

The problem is this: A person supposes, and under the circumstances is entitled to suppose, that he has a contract. Under this supposition he incurs expenses, or he neglects or refuses to make another contract, and in consequence of this

[1] Besitzwille, p. 206, note. [2] *Ibid.*, pp. 17, 18. [3] *Ibid.*, p. 504.

[4] Culpa in contrahendo, oder Schadensersatz bei nichtigen oder nicht zur Perfektion gelangten Verträgen. — *Jahrbücher für die Dogmatik*, IV, 1–112. The essay is reprinted in Gesammelte Aufsätze.

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neglect or refusal he suffers loss or lets an assured profit escape him. It turns out that, owing to circumstances for which he is in no wise responsible, of which he was not aware and could not be expected to be aware, he has no contract. What remedy can the law give him?

The problem arises, as Jhering pointed out, in many different classes of cases. The contract may be invalid because the other party is by law incapable of binding himself. It may be invalid because the thing which the other party has undertaken to do is impossible. Or it may be that the other party to the contract has made a mistake such as the law permits him to plead — a mistake that is excusable and of such importance that but for the mistake he would not have made the declaration, whether of offer or acceptance, which he has made. Or a mistake has occurred in the transmission of the declaration, whether by messenger or by telegraph.[1] In some of these cases[2] the Roman law treats the contract as void, while the English law makes it voidable only; but under either view the party who has taken at its face value the declaration made or sent to him, who was justified in so taking it, and who has suffered damage by reason of his confidence, seems to have no remedy on the contract.

Has he any other remedy? In one case he undoubtedly has, namely, in the case of fraud or misrepresentation on the part of his antagonist. If, however, no fraud or misrepresentation can be shown, — and in some of the cases above set forth this is excluded by hypothesis, — the dominant German theory, before Jhering's essay was published, gave him no claim for damages.[3] In some modern decisions, however, and in some of the modern codes, Jhering found a claim for damages sporadi-

[1] In the case of telegraphic mistakes the German jurists are forced to decide whether the resultant damage shall fall upon the sender or the addressee, because the telegraphs are governmental, and the government will not pay.

[2] Other cases discussed by Jhering are here omitted, either because they are peculiar to the Roman law, or because they are of minor importance.

[3] After Jhering had elaborated his theory, he discovered that it had been substantially anticipated by Richelmann, Der Einfluss des Irrthums auf Verträge (Hanover, 1837). Richelmann, however, had not so presented it as to make any impression on his contemporaries.

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cally recognized — recognized, that is, in some of the cases in which he believed it should be recognized. Damages, when allowed, were sometimes measured by the interest which the party had in securing the performance of the contract. This, Jhering maintained, was going too far. In other cases only such damages were allowed as the party suffered by reason of his justifiable belief that he had a contract. This Jhering declared to be the correct solution. The party in question should have no claim either for the performance of the contract or for damages for non-performance; for to allow either claim would be to recognize the invalid contract as valid. What should be accorded him is a claim to be put in as good a position as if he had never been led to suppose that he had a contract. This, as contrasted with the "positive interest" in performance, Jhering termed "negative interest."[1]

In one class of cases Jhering was able to show that this claim for negative interest was recognized by the Roman jurists, namely, in cases where a contract of sale was void because its performance was objectively impossible. Where, for example, a person unwittingly bought land that was sacred, or religious, or the property of the people, Modestinus declared that "although the purchase does not hold, yet the purchaser will have an action on the purchase against the vendor to recover damages for being misled"—"*quod interfuit eius ne deciperetur.*"[2]

Neither in the *Digest*, nor in the modern codes in which Jhering found the rule for which he is pleading practically recognized, was the reason for the rule set forth; nor did he find it satisfactorily enunciated in any of the modern decisions. According to his theory, the claim for negative interest is based upon the negligence (*culpa*) of the antagonist. In the cases mentioned in the *Digest*, as he urges,

[1] "Interest"— *quod actoris interest*, the difference it makes to the plaintiff — is the older European term for damages, including both *damnum emergens*, positive loss, and *lucrum cessans*, failure to gain. In the French law we have the phrase *dommages-intérêts*. In the new German code, *Interesse* designates the measure of damages; damages recovered are *Schadensersatz*.

[2] Digest, 18, 1, fr. 62, § 1. *Cf.* Inst. 3, 23, § 5. See also Digest, 11, 7, fr. 8, § 1, and 18, 4, frs. 8, 9. The passages cited, as Jhering shows, cannot be explained on the supposition that the vendor knew and concealed the impossibility.

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the vendor contracts without being personally able to furnish the requisites of the validity of the contract, and through the false semblance of contract he misleads the other party.[1]

It is true that there is usually, at Roman as at English law, no liability for negligence except in contractual relations. The contractual duty to exercise proper care does not, however, begin with the *conclusion*, but with the *concluding* of the contract. In contracting,

> the first and most general obligation assumed is this: to exercise in the act of contracting itself the requisite *diligentia*. Not merely existing contractual relations, but such also as are coming into existence, must be brought under the protection of the rules regarding negligence.[2]

This point of view gave the essay its title, "*Culpa in contrahendo*." In the essay itself, however, there are indications that this construction was not wholly satisfactory to its author. In some of the cases in which he desired to hold a party liable for negative interest, it is impossible to show any real negligence; and Jhering, admitting this, fell back upon a presumption of negligence.[3] This, according to his own declaration,[4] is tantamount to abandoning the search for "the right road."

That he should have clung to this theory is the more singular because in other passages of the original essay he clearly develops a different and more tenable construction. He tells us that the party to whom an apparently good declaration comes should not be required, in order to protect himself,

> to exact an express warranty of the absence of negligence or, more particularly, of the existence of the legal requisites of contract. The law can and should spare him this trouble by reading into the act of contracting itself *the tacit assumption of such a warranty* [*die stillschweigende Uebernahme dieser Garantie*]. In extra-contractual relations no one can demand from another the warranty of the trustworthiness and truth of his utterances and communications. . . . In contractual intercourse, on the contrary, in which just these utterances are intended to acquire binding force, he can look to the other party to determine whether they are well founded; he himself, as a

[1] *Jahrbücher für Dogmatik*, IV, 41
[2] *Ibid.*, p. 42.
[3] *Ibid.*, p. 36.
[4] *Supra*, p. 43.

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rule, is not in a position to make any such investigation. In concluding the contract with him, the other party *warrants* [*garantirt*] to him the satisfactory result of such an investigation. . . . Whether he assures him in words or by his act that he is in a position to conclude this particular contract, can make no difference: *this assurance* [*Versicherung*] *lies in the act of contracting itself.*[1]

Jhering's rule of negative interest has found very general acceptance,[2] both among German writers and in German legislation. It has found a place in almost every compendium of modern Roman law. The new German civil code recognizes it in the cases where contracts are voidable because of the mistake of the other party or because of mistake in the transmission of a declaration, and in the cases where contracts are void because their object is impossible or illegal.[3] Many of his colleagues,

[1] *Jahrbücher*, *loc. cit.*, pp. 42, 43. The italics are mine.

[2] Except in the case where the invalidity of the contract is due to the lack of capacity of the other party. Jhering himself was not quite sure of this case. — *Ibid.*, pp. 57 *et seq.*

[3] The German code also recognizes the negative interest of contract in one case in which Jhering declared that it should not be recognized. § 93 reads: "A declaration not seriously intended, which is made in the expectation that the lack of serious intention will not fail to be perceived, is void;" and § 97 gives to the other party, if he failed to perceive, and under the circumstances could not be expected to perceive, the lack of serious intention, a claim for negative interest. Jhering, in his essay (p. 74), took the very sensible ground that when a declaration is made jocosely, the joke, under the circumstances, must either be one that other persons are bound to see, or one that they are not bound to see. In the former case, no one ought to have any claim, even for negative interest; in the latter case, the joker should not be allowed to plead his humorous intention.

The sections of the code which refer to negative interest are the following:

"§ 97. If a declaration of will is null according to § 93 [lack of serious intention], or is avoided on the basis of §§ 94, 95 [mistake as to the content of the declaration, absence of intention to make a declaration of such content, mistake as to essential qualities of the person or the thing, mistake in the transmission of a declaration], he who made the declaration is liable, in case it was addressed to a particular person, to this person, in other cases to every third person, for the damages which such person suffers by reason of his reliance on the validity of the declaration; but not beyond the amount of the interest which such person has in the validity of the declaration.

"The liability for damages does not arise if the person who suffers damage knew the cause of the nullity or voidability, or failed to know it in consequence of negligence (was bound to know it). In the case of § 95, the liability for damages is also excluded if the incorrectness of the transmission is owing to an unavoidable cause [*höhere Gewalt*]."

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however, have chosen to base the rule on the theory of implied warranty, and not on the theory of *culpa in contrahendo*.[1] In Jhering's view the action for negative interest is contractual; the contract, though invalid for every other purpose, is upheld for this.[2] On the theory of implied warranty, the action is not on the contract, but on the separate warranty involved in the act of contracting.

Another portion of the new civil code reveals the influence of Jhering's theories. The first draft of that code appeared in 1888, while he was writing his *Possessory Intention*, and he subjected the section on possession (§§ 797–825) to a searching criticism.[3] The codifiers had maintained, formally at least, the Roman distinction between purely physical control or detention (*Inhabung*) and possession (*Besitz*); and in accordance with

"§ 259. A contract looking to an impossible performance is null.

"If in concluding the contract the one party knew or was bound to know the impossibility of performance, he is liable for the damages which the other party suffers by reason of his reliance on the validity of the contract, but not beyond the amount of the interest which such party has in the validity of the contract. The liability for damages does not arise if the other party knew or was bound to know the impossibility.

"The provisions of clause 2 will have suitable application in case the promised performance is only partially impossible, and the contract is valid as regards its possible part, or in case one of several performances alternatively [*wahlweise*] promised is impossible."

"§ 261. If a contract is in conflict with a legal prohibition, the provisions of § 259, clauses 2, 3, . . . will have suitable application."

The limitation, in the above paragraphs, of the negative interest to the amount that might be claimed, were the contract valid, for its non-performance, is reasonable and necessary. Suppose, for example, that a vendor, thinking himself bound, refuses a better offer; is he to claim the profit which the acceptance of such offer would have given him? Without the limitation in the above paragraphs he would be entitled to do so.

The above citations are from the revised draft — Entwurf, Zweite Lesung. The text of the code as adopted is not before me, but it is understood that few changes were made.

[1] *Cf.* Windscheid, Pandekten, II, § 307, n. 5. *Contra* Vangerow, Pandekten, I, § 109, and Dernburg, Pandekten, II, § 10, n. 10, who are satisfied with the theory of negligence. In the first draft of the German civil code, §§ 97, 345, liability was expressly based on negligence (*Fahrlässigkeit*), but this is not the case in § 97 of the revised draft, cited above.

[2] This appears to have been the view taken by Modestinus, in Dig. 18, 1, fr. 62, § 1, *ex empto experietur;* but compare Ulpian's *quasi ex empto*, Dig. 11, 7, fr. 8, § 1.

[3] Besitzwille, ch. xix, pp. 470–534.

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the dominant theory,[1] the distinctive element in possession was declared to be "the intention of the holder to hold the thing as his own." Possession was therefore excluded, and only detention recognized, in three cases: (1) Where one cannot hold the thing as his own, because it is incapable of being owned; (2) Where one cannot hold the thing as his own, because it is a part of another thing and incapable of separate ownership; and (3) Where the thing is held for another. With the first of these cases Jhering made merry:

> Things in which no ownership is possible — of what things are we here to think? I know of none, and I have sought in vain for any in the motives accompanying the draft. For the Roman law, the rule, . . . where there is no ownership, there there is no possession, had practical reality, for the Romans recognized things in which ownership was not possible (*res extra commercium*); but what has the rule to do with us? It might be reversed without making the least difference. The Roman category is retained, but there is nothing to put in it. It is an empty druggist's jar, left standing after a change in the official pharmacopœia, although the article for which the label calls is no longer kept in stock.[2]

As regards the second and third cases Jhering pointed out that, according to §§ 814 *et seq.* of the draft, the detentor was to have all the rights of a possessor except as against the possessor of the entire thing (*e.g.*, a building) of which he holds a part (*e.g.*, a suite of rooms), or the possessor for whom and in whose name he holds. Why then, Jhering urged, is he not called possessor? Why keep up the distinction of names when the possessor and the detentor have been substantially assimilated?

In the second draft this suggestion was followed. The detentor (*Inhaber*) has disappeared, and with him has disappeared the requirement of the *animus rem sibi habendi* for the possessor (*Besitzer*). Of the Roman possessor but one trace is left. The last paragraph of the section (§ 793) declares that "he who possesses a thing as belonging to him, is *Eigenbesitzer*." This old friend with a new face, who thus makes his

[1] Political Science Quarterly, XI, 282, 283, 285.
[2] Besitzwille, pp. 472, 473.

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entrance just as the curtain drops upon possession, reappears later when the stage is set for prescription ; and in this scene he plays the leading part.

Another and more practical criticism upon this section of the code turned upon the protection which it gave to the detentor who holds for another against the person for whom he holds. He was authorized to meet arbitrary disturbance or an attempted ouster with force. He was authorized, if forcibly deprived of a movable, to employ force for its immediate recovery ; if forcibly ejected from real property or ousted in his absence, to resume control by force (§ 815). This protection, said Jhering, is all very well in the case of the person who has borrowed or hired from me a horse, or has leased from me a house or an apartment ; but how about household servants and other employees ? How about agents ? If I wish to turn my butler out of the room he occupies in my house, or if I wish to prevent a messenger whom I have hired from making off with a parcel instead of delivering it, must I appeal to the courts ? If I lend an opera glass to a person sitting by me in the theatre, and he refuses to give it back, may I not take it ? And if I take it from him by force, is he to be permitted to use force for its immediate recovery ?[1]

Here again the second draft puts things straight. After defining possession as "actual power" (*thatsächliche Gewalt*) over the thing, without any allusion to the intention with which this power is exercised, the code continues :

§ 778. If any one exercises the actual power over a thing for another person in that person's household or business affairs, or in any other relation by virtue of which he has to follow that person's instructions in reference to the thing, that person only is possessor.

Here then the Roman "natural possession" reappears, and in very much the same relations in which Jhering asserted, by virtue of his reconstructive imagination, that it originated.[2] This natural possessor of § 778 has only those natural rights of self-defense and self-help which are requisite to protect the

[1] Besitzwille, pp. 503 *et seq.*

[2] *Ibid.*, ch. viii. *Cf.* POLITICAL SCIENCE QUARTERLY, XI, 285, 286.

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property entrusted to him against third persons (§ 782). On the other hand, all those who hold for or in the name of another, but in relations other than those indicated in § 778, are possessors, with full possessory rights even against those for whom or in whose names they hold. If they are to be deprived of possession, it must be by process of law. In this class we find, as at Roman law, the usufructuary and the pledgee, and also the lessee, to whom the Roman law was so unfair (§ 790).[1]

Considering the attention which German writers have devoted to this subject,[2] and the care with which the first draft of the code was worked out, the section on possession was surprisingly bad. In the second draft, the same section is admirable, both in substance and in expression. The credit for the improvement is largely due to Jhering.[3]

Windscheid's chief contributions to constructive jurisprudence were his theories of the "claim" and of the "presupposition." Claim (*Anspruch*) he defined as the personal incidence of the right.[4] Real rights, that is, rights in things, are, he explained, primarily powers over the things themselves; but they have personal incidence also. They run against every one, carrying with them a claim for non-interference. When a claim of this character is infringed, when some one interferes with the dominion of him to whom the right pertains, the claim assumes the form of a right of action. Personal rights, on the other hand, have for their primary

[1] Those also for whom possession is held have possessory rights against third persons: they have "mediate" or constructive possession.

[2] *Cf.* POLITICAL SCIENCE QUARTERLY, XI, 278.

[3] Credit for inducing a more practical consideration of the whole subject is also due to Count Piniński, Der Thatbestand des Sachbesitzerwerbs (Leipzig, 1885). Great credit — as much, perhaps, as can be claimed for Jhering — is due, as regards the improvement of the section in the code, to Gierke, who had anticipated in Schmoller's *Jahrbuch für Gesetzgebung, etc.*, XII, 3, pp. 74 *et seq.*, many of Jhering's criticisms. Credit is doubtless due to others; but when there was such a deluge of criticism as was poured upon every part of the first draft, it is not possible to do justice to all the critics.

[4] "Die persönliche Richtung des Rechts." — Die Actio des römischen Civilrechts vom Standpunkte des heutigen Rechts (Düsseldorf, 1856). See also Pandekten, I, § 43.

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object the acts or forbearances of particular persons. They exist only in their personal incidence : they are simply claims. If what is claimed be an act, the claim is, from the start, a right of action. If what is claimed be a forbearance, there is no right of action until he whose duty it is to forbear violates this duty.

The Romans used the word *actio* to describe, not merely the appeal to the courts, nor merely the power of appealing to the courts, but the right itself in its personal incidence. They often used *actio* and *ius* as equivalent terms. The distinction between actions *in personam* and actions *in rem* is really a distinction between personal and real rights according to their primary or immediate incidence. In the concrete sense all actions are against persons. Windscheid found in German law no term to express the personal incidence of the right, whether immediate or mediate, and he proposed to use *Anspruch* in this sense.

So far the matter is one of terminology merely, but Windscheid went further. Because of failure to discriminate between the different meanings of *actio*, courts and legislatures, he maintained, have come to treat as merely procedural, as connected with remedial law only, rules and institutions that in reality belong to substantive law. The most important case of this sort is the *praescriptio temporis* in its application to actions. According to Windscheid, it is not the suit merely, but the claim, that is prescribed ; and the whole subject should be treated under the caption "prescription of claims," not under that of "prescription of suits." According to his construction, prescription begins to run as soon as the claim exists and is "unsatisfied." Prescription is interrupted, not only by bringing suit, but by any distinct exercise of the right against the person of incidence. The prescription of the "real claim" (*actio in rem*) leaves the right intact, because the prescribed claim is but an expression or manifestation of the right ; but the prescription of a personal claim (*actio in personam*) destroys the right, because the right is nothing but claim. To translate this latter conclusion into the terms of English law : the

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limitation of an action for the recovery of debt, or of an action for damages for breach of contract, does not merely bar the remedy, but destroys the right.

Windscheid's theory has not obtained general or unqualified acceptance among his colleagues. Brinz[1] declared that he could not think of a claim without a particular person against whom the claim was directed. Thon[2] pronounced the theory of a claim against the world to be as idle as it is misleading. Their criticism touches Windscheid's "real claim" which runs against everybody, and is, I think, sound. According to Windscheid's own definition no "real claim" should be recognized until the right has found a really personal incidence. It is, however, mere juggling with words to say in the same breath that my right to be paid one hundred dollars on B's note has "personal incidence" against B, and that my right to the control and enjoyment of my back yard in New York has "personal incidence" against every citizen of the United States. Accordingly, the majority of the German jurists who have accepted Windscheid's word, give to the *Anspruch* a narrower and more definite meaning, and recognize no "real claim" except against the person who has interfered with the control and enjoyment of the thing.[3] Thus construed, the "claim" becomes practically equivalent to the English "right of action" in its broader sense.[4]

Windscheid's conclusions touching prescription of actions are unaffected by this question of the construction of his own definition. In fact, they harmonize better with the construction which makes his claim equivalent to the English right of action than with his own construction; for his "real claim" is not subject to prescription until it is "unsatisfied," and it

[1] Pandekten, I, 252; cited by Dernburg, Pandekten, I, § 39, n. 5.

[2] Rechtsnorm, p. 159; cited by Dernburg, *Ibid.*

[3] Windscheid himself is inconsistent in his own construction. If the "claim" of an owner for forbearance runs against all the world, and if limitation of the action is destruction of the "claim," then the limitation of an action on trespass extinguishes the owner's claim against all the world, and he can bring no action on anybody's trespass.

[4] For a criticism of Windscheid's theory on other grounds, see Jhering, Besitzwille, p. 520, and Dernburg, Pandekten, I, § 39 *in fine* (pp. 87, 88).

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is perfectly satisfied so long as there is no interference with the substantive right. As soon as this interference comes, however, there is a right of action. His theory of limitation may accordingly be stated as follows: It is not actions that are limited, but rights of action. If the English courts accepted this theory, they would be obliged to hold, as he does, that when an action for the recovery of debt is barred, the debt is extinguished. Their contrary decisions are based upon the theory that statutes of limitation operate only as a bar to suits. In this matter, again, there is, among German jurists, no general and complete acceptance of Windscheid's views.[1]

In the new German code the term *Anspruch* is very freely used. It is defined in § 161 as "the right to require from another an act or forbearance" — "*ein Thun oder Unterlassen.*" It is everywhere employed in this broad sense: it is practically the substantive form of the verb "require" (*verlangen*). In the law of things it is not always a claim against a particular person.[2] In the law of obligations it plays a subsidiary part: the primary claim is termed *Forderung*, while other claims are commonly described as *Ansprüche*. *Forderung* is clearly a species of the genus *Anspruch*.[3] The section on prescription[4] speaks throughout of the prescription of *Ansprüche;* the German word for action, *Klage*, occurs only in the paragraphs relating to the interruption of prescription by bringing suit. The whole section is drafted in substantial harmony with Windscheid's theory.

In his doctrine of "presupposition"[5] Windscheid endeavored to show that several distinct institutions of the Roman law were merely different expressions of one idea, and that numerous rules, not previously brought into relation with each other, were all corollaries of one general principle. The character and range of these rules may be indicated by a few examples. A man buys a brass vase supposing it to be of gold, or clothes

[1] See Dernburg, Pandekten, I, § 145, pp. 335, 336; § 150, p. 346.

[2] See §§ 803 *et seq.*

[3] So Windscheid, Pandekten, II, § 250.

[4] Verjährung, §§ 161–190.

[5] Die Lehre des römischen Rechts von der Voraussetzung (Düsseldorf, 1850), and Pandekten, I, §§ 97–100; II, § 423; III, §§ 556, 636.

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that have been renovated, supposing them to be new; the vendor labors under the same mistake; the sale may be rescinded, or the difference in value recovered.[1] A testator has named as his heir a person whom he supposed to be his son; it is shown that this person is not his son; the testament may be overturned.[2] A person has paid what he supposed to be money owed; it turns out that nothing was owed, or not so much; he recovers the money paid, or the excess, with the *condictio indebiti*.[3] A person has paid money which he supposes that he will owe; and it turns out that he does not owe it — *e.g.*, he has paid rent in advance, and the house he has leased burns down; he recovers the money.[4] A person pays money that a slave may be manumitted; the slave is not freed; he recovers on the *condictio ob causam dati*.[5] A man gives presents to the girl to whom he is betrothed; the engagement is broken by her or her parents; he recovers the presents on the *condictio ob causam dati*.[6] A testator makes a bequest of land to a municipality, with the request that the annual income be expended upon public games; no games are celebrated for four consecutive years; the testator's heirs can recover the mesne profits.[7] In cases analogous to this last, the Roman jurists also recognized a right to obtain performance. They held that a legacy with such a charge annexed could be held back until the legatee gave security for performance of the charge; and that, where a gift was made *inter vivos* with such a charge annexed, the donor or his heir could sue for its fulfillment.

According to Windscheid, the principle that underlies these and other analogous cases is as follows: He who has made a declaration of will (done a legal act)[8] in the belief that a certain state of things, actual or legal, existed in the past or exists in the present, or in the expectation that a certain state of things,

[1] *Dig.*, 18, 1, fr. 45. As to the question of a warranty, see Windscheid, Voraussetzung, p. 116. He assumes that there was no warranty.

[2] Cod., 6, 23, c. 5; *Dig.*, 37, 10, fr. 1, § 11.

[3] *Dig.*, 12, 6 *passim*.

[4] *Dig.*, 19, 2, fr. 19, § 6.

[5] *Dig.*, 12, 4, fr. 3, § 2.

[6] Cod., 5, 3, c. 15.

[7] *Dig.*, 33, 2, fr. 17.

[8] This and the following parentheses are inserted to aid the English reader in translating Windscheid's formula from the realm of will to the realm of its external manifestation in conduct, with which alone the law has to do.

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actual or legal, will exist in the future, and who would not have willed (acted) as he did but for such belief or expectation, has willed (acted) under a "presupposition," and has imposed upon the operation of his will (act) a limitation that is analogous to a condition.[1] The presupposition is "an undeveloped condition." In case of the failure of the presupposition — in case the belief was erroneous; in case the assumption, although originally correct, becomes incorrect; in case the expectation is not realized — the person who has assumed obligation has a defense, and the person who has parted with anything has an action for recovery; or if the person is dead, the same defense and the same action pertain to his representative (heir or executor). If the presupposition was that the party benefited by the act was to do anything, there is also a claim for specific performance. In the case of acts *mortis causa*, the above rules are unqualified. In the case of acts *inter vivos*, they obtain only when the presupposition was indicated, expressly or by implication, to the other party — only when, in other words, he perceived or should have perceived that the act would not have been done but for the belief or expectation in which it was done.

On its face this construction has merits. The separate doctrines of mistake in motive[2] and of charge (*modus*), and at least a large part of the doctrine of unjust enrichment, are brought under one cover. On more careful examination, however, the question arises whether anything is gained by this achievement. Does Windscheid's rather cumbrous theory make the application of the rules more easy? Does it make their application more certain? The Roman doctrines are clear cut; there is little difficulty in applying them. In contemplating Windscheid's doctrine, on the contrary, we are conscious of a vagueness of outline, and we are not sure how it would work out in

[1] The presupposition, according to Windscheid, may also be negative — that a certain fact or legal relation did not, does not, or will not exist.

[2] Savigny's distinction between mistake that excludes consent ("fundamental mistake," Pollock terms it) and mistake in the motive is generally accepted by German jurists, and Pollock (Principles of Contract, p. 393) pronounces it applicable to English law.

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practice. If we concede its merits as a bit of legal science, can we call it a good piece of legal art?[1] On all these points there is much difference of opinion among German jurists. Not a few of Windscheid's colleagues have accepted it,[2] and it has obtained some recognition in the courts.[3] Other jurists have rejected it.[4] In the first draft of the German code it found partial recognition.[5] In the second draft it has completely vanished.

The effect produced by these special doctrines, claim and presupposition, was trifling compared with the influence which Windscheid exercised upon theory, practice and legislation at large, through his great work on *Pandects*.[6] The title, it may be well to explain, signifies a detailed presentation of the rules of modern Roman law. As the Roman law, in the absence of contrary custom or legislation, is the general law of Germany,

[1] To the distinction between the two Jhering has given classic expression. — Geist des römischen Rechts, 3d ed., part ii, div. ii, pp. 323, 324.

[2] Rudorff, Bähr, Unger, Brinz and others; cited by Windscheid, Pandekten, I, § 97, note 1.

[3] Citations from Seuffert's Archiv für Entscheidungen, in Windscheid, *Ibid.*

[4] Voigt, Die Condictiones ob Causam (1862), pp. 515–523, cited by Windscheid, *Ibid.* Dernburg, Pandekten, I, § 116, finds that really heterogeneous matters are brought by Windscheid under one category, and that his presupposition cannot take the place of the concrete and definite constructions of the Romans.

[5] In the first draft the commissioners put the *condictio ob causam* under the heading *Voraussetzung* (§§ 742 *et seq.*), and stated the rules of the Roman law in accordance with Windscheid's theory. They declared also that testamentary dispositions and inheritance contracts might be attacked because of failure of presupposition (§§ 1781 *et seq.*, 1948 *et seq.*); and they based the claim for recovery of gifts after dissolution of an engagement to marry on the presumption of a presupposition (§ 1229). In all these cases, however, they limited the term to the expectation of future events or future legal results; and in connection with the *condictio ob causam* they declined to admit recovery on the ground of an erroneous supposition as to past or present circumstances, because this would open the door to numerous attacks upon contracts because of mistake in motive (Motive zu dem Entwurfe, II, 843). In other portions of the draft, however, they used the term presupposition for a determinant supposition as to past or present circumstances: *cf.* § 290, cl. 4; § 667, cl. 2; § 684, cl. 2. In treating of *modus* or charge (*Auflage*) (§§ 448, 1757, 1886 *et seq.*), they avoided the term presupposition entirely; and in Motive, I, 249, they explained that the doctrine of presupposition as a general category of the self-limitation of the operation of legal acts was not sufficiently developed to make its employment safe (*unbedenklich*) in legislation.

[6] Lehrbuch des Pandektenrechts. Three vols., 1862–70. Seventh ed., 1891.

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and as the newer codes, for the most part, are based upon Roman law, the German who lectures or writes upon Pandects lectures or writes upon the private law of Germany as a whole. The Germanist, who describes those institutions of Teutonic law that survived the reception of the Roman law and notes the modifications introduced by modern German legislation, simply adds a number of details to the picture drawn by the Pandectist.

In every German university there are regularly two Pandectists, and many of these publish their Pandects. Of all these Pandectists Windscheid was for a generation the most popular. In his lectures he counted his hearers by hundreds where the majority of his colleagues counted theirs by tens, and his book enjoyed a corresponding vogue. It was the book which must be studied, whatever other books were read or left unread. It was the *vade mecum* of the referendary and of the assessor. It was constantly cited by the advocate and consulted by the judge.

The book has, of course, striking merits, or it could have had no such success. It has proportion: the space alloted to the various subjects is determined by a sound sense of their relative importance. Each section is carefully thought out, and — a rarer excellence — the bearing of each section upon the others is thought out with equal care. Each institution is regarded in its relation to other institutions. The whole book hangs together: it is really systematic. The style is concise and clear. The vocabulary is German. Windscheid was a purist, and coined many German expressions to take the place of the customary Latin terms.

The most remarkable and most admirable part of the book is the footnotes. They constitute by far its greater part: they fill, at a rough estimate, two-thirds of the space, and contain more than four-fifths of the matter. In them, as I can testify from long use, every significant passage of the *Corpus Iuris* — every passage, at least, that has any relevancy to modern life — is somewhere cited. If there is serious doubt as to its interpretation, the doubt is noted and Windscheid's interpretation

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is briefly indicated. Wherever it seems necessary, reference is made to books, brochures or articles in which the passage is more fully discussed. Modern German decisions are not neglected; they are at least more frequently cited than in any other German work of the same kind. The notes serve also as an index to the German literature, from Savigny down, including not a little of the periodical literature. They are, however, much more than an index: it is hardly saying too much to call them a digest. All important controversies are noted; the chief arguments on all sides are stated (it is a poor controversy in Germany that has only two sides); and the prevalent opinion is fairly indicated, whether it happens to be the author's opinion or not. For the German literature of the Roman law in this century — barring the purely historical writings — Windscheid has done what Accursius did for the glossators. It is no wonder that his book became a new "standard gloss" in the German administration of civil justice.

The faults of the book — the extremely abstract statement of principles and even of rules, the over-valuation of deductive results, the undue stress laid upon the psychical processes of the individual and the useless subtlety displayed in their analysis — these faults, I think, rather increased than diminished the influence of the work; for in his defects as in his excellences Windscheid fairly represented the jurisprudence of Germany in the nineteenth century. A few very practical young men, most of them Jhering's converts, accused Windscheid of being a "post-glossator," which meant that, in their opinion, he represented the scholastic tendencies of European jurisprudence in the fourteenth and fifteenth centuries; but the great majority of his contemporaries were in full sympathy with his views and methods.

The first draft of the German civil code gave striking evidence of the hold which Windscheid's *Pandects* had gained in German practice. The great majority of the commissioners were not theorists, but practitioners; not pupils of Windscheid, but his contemporaries; and yet, when the code was published in 1888, the remark that was most often heard — I speak as

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a witness on the spot — was, "It is pure Windscheid."[1] In this remark there was, of course, no little exaggeration. Much that was designated as Windscheid was simply Roman; much was really Savigny-Puchta-Windscheid, or modern Romanistic theory. Uttered by a Germanist, the remark usually meant that the code contained too little German law. As the code was studied, moreover, it was found that in employing Windscheid's terms the codifiers had not always followed Windscheid's construction. But, allowing for all exaggeration, the remark remains an extraordinary tribute to Windscheid.

In the second draft the amount of pure Roman law was appreciably diminished, and the quantity of "pure Windscheid" was lessened in more than the same proportion; but in spite of these changes, the civil law of Germany will bear, possibly for centuries, as legible an impress of the labors of the Leipzig professor as that which the work of Pothier, professor at Orléans, has left upon the civil code of France.

Bruns was a less prolific writer than Jhering or Gneist, and he published no work of such importance as Windscheid's *Pandects*. His earliest and his latest writings, like Jhering's, were historical.[2] The line of research which he opened in his *Law of Possession in the Middle Ages* was carried further in an essay on prior possession[3] and in a book on *The Possessory Actions of the Roman and the Modern Law*.[4] The fact that he deplored many of the changes in the law of possession which were effected in mediæval practice, and that, like Savigny, he preferred the Roman rules, did not neutralize the weightier fact

[1] Windscheid was himself a member of the commission — one of the two "theorists" — but his direct and personal influence cannot have been decisive. Apart from the fact that he was but one among eleven, it should be noted that he was not charged with the preliminary draft of any part of the code; and that in the general discussion which continued from October, 1881, through December, 1887, Windscheid participated for the first two years only. In October, 1883, he was recalled by the Saxon government to his professorial duties at Leipzig, and was obliged to resign from the commission.

[2] He was also, for many years, an editor of the *Zeitschrift für Rechtsgeschichte*.

[3] Der ältere Besitz und das Possessorium Ordinarium, in *Jahrbuch des gemeinen deutschen Rechts*, IV, 1 (1860).

[4] Die Besitzklagen des römischen und des heutigen Rechts (1874).

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that he showed these changes to be steps in a process of development and not a mere series of misconceptions. His bias did not prevent him from interpreting the Roman rules in a sense more liberal than Savigny's; nor did it prevent others from using the data furnished by him as a basis for conclusions divergent from his own. It was thus that his *Law of Possession,* as has been noted in a previous article,[1] helped to produce a reaction against Savigny's revival of pure Roman law. It should be added that the book was characterized by a freer employment of the comparative method than was at all usual in the middle of the century. In 1880, the year of Bruns's death, appeared his *Syrian-Roman Law Book of the Fifth Century.* This work was the product of philological and juristic collaboration: in the establishment of the text and in the translation Bruns obtained the assistance of Eduard Sachau. The commentary, however, in which the significance of this provincial compilation of Roman law was for the first time clearly brought out, was Bruns's own. The importance of the *Syrian Law Book* lies, as he showed, in the evidence it gives of the variety of provincial systems that existed in the Roman empire,[2] of the resistance which they oppposed to codification, and of the connection between the legislation of Justinian, in the sixth century, and the older customs.

Bruns's historical investigations, unlike Jhering's, were prosecuted solely for the purpose of making the existing law more intelligible. Legal history, in his opinion, ought to be "the handmaid of dogmatics." Like Windscheid, moreover, he devoted the greater part of his energy to the direct study of modern Roman law. Had he lived a few years longer in that vigorous health which was his till within a few days of his death, he also would have published his Pandects. He had begun the book.[3] As it is, the only permanent record of this portion of

[1] POLITICAL SCIENCE QUARTERLY, X, 681.

[2] Mitteis, Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs (1892), p. 30, declares that Bruns underrated the importance of the non-Roman elements in the Syrian Law Book.

[3] Degenkolb, Karl Georg Bruns (1881), p. 6.

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his life-work, apart from his minor essays, is found in the article on "The Roman Law of To-day," which he contributed to Holtzendorff's *Encyclopædia of Jurisprudence;* and it is by this and the preceding article on "The History and Sources of the Roman Law"[1] that Bruns is best known to the "cultured public" of Germany — including in the phrase that class of lawyers, numerous even in Germany, who lack the time or the energy to follow such minute researches as those by which Bruns won his scientific reputation. These are not such articles as the title "encyclopædia" naturally suggests to English readers. They are of such length that, printed as we print law books, the systematic article alone would make a volume of the same size as Maine's *Ancient Law*, and the two articles, a volume nearly as large as Holland's *Jurisprudence*. They are not mere statements of the dominant views and theories: they present, in compact form, the results of original research by an investigator of exceptional insight and the conclusions of a singularly sane and well-balanced judgment. I know no better sketch of the development of Roman law than that which is given in the first of these articles. It is legal history in the strict sense, not culture history; but it is planned and written on broad lines. The second and longer article, on the modern Roman law, was greatly admired by Bruns's colleagues. Windscheid always urged his hearers to study it; Goldschmidt pronounced it "classic."[2] It is the universal side of Roman law that is emphasized throughout, and the article is more truly a book on general jurisprudence than many larger works that bear this title. I know no better exposition of private law from the Hegelian point of view.

MUNROE SMITH.

[1] Geschichte und Quellen des römischen Rechts, Encyclopädie der Rechtswissenschaft, 3d ed. (1877), pp. 77–129; Das heutige römische Recht, *Ibid.*, pp. 333–477. In later editions the historical article is revised by Professor Pernice and the systematic article by Professor Eck, both of the Berlin University.

[2] *Zeitschrift für Handelsrecht*, XXVI, 338.

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phrases "natural selection," "the survival of the ttest" and "the struggle for existence," with others ne from the *Origin of Species* and the *Synthetic Philos-* e now applied to social phenomena and circulate very y as descriptions of what goes on among mankind. eople would question, however, whether they do not, as d of our silver dollars, pass rather on the credit of their than on the value of any definite ideas commonly asso- th them.

use of such phrases there does, indeed, appear to be of vagueness ; and it is one object of this paper to g toward clearing it up — to find out, if possible, e dubious tokens are in any way exchangeable for of the realm of thought and fact. With this purpose first to inquire how far natural selection y, animal sort taught by Darwin is a process of and then, if it appears that there is another go on to consider its nature and operation. conveniently into three divisions :

lection as a process of social change.
ge, proper.
ce of communication upon social change.

I.

erns the different race elements in the popu- h, the Darwinian idea of change by survival — hat exists does so because it has prevailed at her in a struggle for existence — is not at all a the most verifiable thing in the world. There about other species, but in the case of *homo* the ne on in the light of history and continues in full

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vigor at the present time. It would be difficult to
large region where one race, nation or tribe is not in
in numbers at the expense of the diminution of son
Mr. Galton finds that "there are probably hardly any
the earth that have not, within the last few thousar
been tenanted by very different races";[1] and "that
average at least three different races are to be found
moderately sized district on the earth's surface." His
sion of the races in South Africa "was one of a contin
of ferment and change, of the rapid development of s
here and of the complete or almost complete suppr
another clan there." We are ourselves a part of this
We are in the midst of a rapid and complicated mov
which the general direction is sufficiently clear, th
details are concealed. The European races are alm
where on the increase: within the present centu
nearly trebled in number, and with the Teutonic p
lead, and the English at the head of these, hav
multiplied over a great part of the earth.[2] In the
we have seen the Indian go and the negro stay
cities and our newer farming regions there is act
among recent immigrants from all the Europ
between these and the descendants of immi
date.

If the student turns, however, from the c
to inquire what is going on within any par
not find it so easy to learn what natural
indeed, it is not easy to show that it is mak
is of moment. Suppose, for example, that
what alterations, aside from those due to inter

[1] Inquiries into Human Faculty, pp. 310 *et seq.*

[2] According to Hübner's Tables the population of Eur
366 millions. In 1801 it was 175 millions. Levasseur cal
Europeans out of Europe to have been 9½ millions in 1800 a
Population Française, vol. iii, ch. ix. Professor Brinton state
two centuries ago numbered 100 millions, or about 10 per ce
of the earth; while at the present time the European branche
millions, or one-third of the population of the earth. — See his
page 298.

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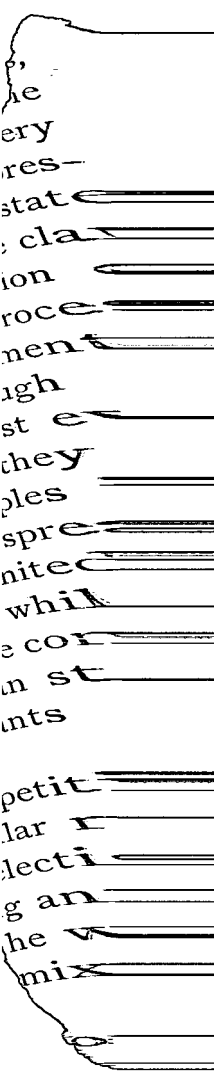

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races, the English stock has undergone within historic time. To understand the nature of this question one must remember that great changes may come to pass in the institutions, manners, morals, and even in the outward appearance of a people, which do not necessarily imply that any organic change has taken place in the stock, either through natural selection or otherwise. If an English couple settles in this country, the children will contract from our climate and society peculiarities of appearance and behavior that will mark them as Americans to the eyes of all the world; but these changes have little to do with natural selection, and it is uncertain whether they can in any degree be transmitted by heredity. So, also, those transformations which make up the rise and fall of nations are chiefly, if not altogether, of the same quality. They take place far too rapidly to be due to natural selection or to any organic change in the race. Decadence seems to be a social deterioration that drags down the individual by subjecting him to unwholesome influences. Thus, there is no evidence that the Chinamen or Spaniards of to-day are congenitally much different from their ancestors in the proudest days of those nations: their degeneracy is apparently of the same character as that observed in the behavior of a group of boys who have fallen into bad ways.[1] It is a decline of tone, of *morale*, of institutions, not of natural capacity.

The decisive illustration of the possible divergence between natural selection and social change is the fact that institutions hostile to survival, like the monastic system, can spread and flourish for centuries in defiance of animal heredity.

[1] "The Spanish-American of pure white blood, whose ancestors have lived for three centuries in tropical America, the citizen of the United States who traces his genealogy to the passengers in the *Mayflower* or the *Welcome*, have departed extremely little from the standard of the Andalusian or the Englishman of to-day though the contrary is often asserted by those who have not personally studied the variants in the countries compared. Conditions of climate and food materially impress the individual, but not the race. The Greeks of Nubia are as dark as Nubians, but let their children return to Greece and the Nubian hue is lost. This is a general truth and holds good of all the slight impressions made upon pure races by unaccustomed environments." — Brinton, Races and Peoples, pp. 44, 45.

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The scientific test of organic difference would be to take new-born infants typical of the stocks to be compared and note what unlikenesses they developed when brought up under the same social influences. Rude comparisons of this sort are possible between contemporary peoples, but they are, of course, impracticable between different periods in the history of the same race. In the case of the Jews the matter has been studied as thoroughly as the nature of the inquiry permits, and it is thought doubtful whether that race has undergone any noteworthy change since the time of Moses.[1] As regards our own and kindred peoples — always leaving aside the mixture of races — I imagine that few anthropologists would venture to say anything positive. If they did, it is quite certain that there would be no agreement among them as to what the direction of change is. Many suppose, for example, that physical vigor is declining by disuse, by the growing preponderance of intellect as a factor in success, by the preservation of weakly children and by the support through charity of pauperism and vice.[2] There is, however, no direct proof of a decline; and it is quite possible that the forces mentioned are more than counterbalanced by others which may be held to have an opposite tendency, such as better and more regular nourishment, the more general practice of systematic exercise, congenial marriages and the improvement of a great variety of degrading social conditions. Either side of this argument may be maintained by plausible *a priori* arguments, and in the present insufficiency of direct evidence there is no way to reach a definite conclusion.

It is even possible to question whether the thinking faculties are now stronger than they used to be. There has certainly been a great deal of mental work of various kinds among the Teutonic peoples since the revival of learning; but even if we suppose that the effect of such exercise can be inherited, we have still to consider that only a small fraction of the race has taken part in it. Moreover, when we see that the

[1] See papers by Neubauer and Jacobs in vol. xv of the Journal of the Anthropological Institute.

[2] For an admirable discussion of the influence of charity upon survival, see Warner, American Charities, ch. v.

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men who lead in letters, science and statesmanship often spring from a peasant class whose forefathers have not shared appreciably in the intellectual activities of the past, it is clear that ancestral culture is not essential in producing eminence of this sort. It is significant, too, that one of the most noteworthy intellectual influences now at work comes from the Russians, a people new to civilization. In short, if we could transplant a few thousand babies out of our remote ancestry and give them modern nurture and training, they might, for aught we know, turn out their share of Congressmen, novelists and electrical engineers, and be little distinguishable in any way from the rest of the population. The statue called "The Dying Gladiator" represents a possible ancestor of more than two thousand years ago; yet he appears to me quite modern and familiar — a little wild perhaps, as we might expect from his mode of life, but otherwise such a man as we might come across almost anywhere at the present time.

Natural selection, apart from the conflict of races, is apparently much more active in preserving than in changing types, for it discourages wide deviation in any direction. Out-and-out criminals and those sunk in self-destructive vices are not, as a class, prolific; but no more are the people of conspicuous intellectual or moral power. It is the intermediate and undistinguished multitude that keeps up the population.

Some entertain the notion that the most degraded classes are the most prolific; but I know of no support for this. Among the conditions of a rapid natural increase are physical vigor and a fairly stable family life. In both of these respects the pauper and criminal classes are decidedly inferior to the rest of the population. On the other hand, many suppose that success and survival go together — that what we call competition is only a more or less mitigated form of the struggle for existence; and that as a rule and in the long run those who gain wealth, power, and other things for which men strive, are enabled to leave more children than others and so to perpetuate those characteristics to which they owe their success. It is often assumed that this is too clearly the case to require special

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investigation; but this assumption will appear rash to any one at all familiar with statistics, and seems to have arisen, not from the direct study of mankind, but by a hasty inference from the results of biology. Men of unusual success are not unusually prolific: so far as can be made out from statistics they are as a class below the average in this respect. Indeed, a very plausible argument, backed by figures *ad libitum*, might be prepared to show that the successful do not survive and are therefore the unfit. Certainly nature's standard of success — that is, survival — is quite distinct from the social standard; and to a great degree the two are opposed. To marry early and raise a large family is by no means favorable to the gratification of personal ambition. It seems, therefore, that conspicuous failure and conspicuous success are about equally unfavorable to survival, and that those paths which diverge very widely from the main-traveled road of ordinary humanity lead to extinction.

This conservatism in the conditions of survival is well illustrated by the case of educated women. They seem to be, on the whole, a very beneficent class of persons, and one whose progressive spirit it would be well to transmit in every possible manner; yet we cannot expect that the women who belong to it will leave as many children as those whose entire energy goes into reproduction. In fact, a large part of college women do not marry at all; and the remainder are likely to marry later and to have children at less frequent intervals than other women.[1]

It is, accordingly, not at all clear that natural selection, aside from the prevalence of races, acts definitely or rapidly as a cause of social change. No doubt the races of men, and especially those whose history is eventful, undergo more or less organic transformation: this must have been so in the past, since otherwise new types could not have originated; and it is not likely that the process has altogether ceased. This

[1] See the Report of the Mass. Labor Bureau for 1885 on "The Health Statistics of Female College Graduates"; also "The Marriage Rate of College Women," *The Century*, Oct. 1895.

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transformation, however, is probably slow, and its character and direction are difficult to make out: the whole matter, involving as it does the laws of heredity, requires and will no doubt receive the most thorough study. In the meantime, it is apparent that natural selection of this simple, animal sort is not the ordinary process of social change. It has little to do with the rise, spread and decay of architecture, music, painting or poetry, or of the great religious systems; it is not the process by which governments become milder, popular education advances and manners meliorate; nor is it that by which new views prevail about childhood and the status of women.

II.

The process which generates opinions, moral standards and institutions, and which results in progress or decadence, is especially characteristic of human life, though it is thought to be operative in some measure among all the social animals. It rests upon the imitative, sympathetic and intellectual faculties, and is related to natural selection through the probability that these faculties have an evolutionary history in which natural selection plays a part.

It would not be difficult to show that the higher faculties of man are not, as some suppose, elements quite apart from and inconsistent with the struggle for existence, but are decisive factors in it while it endures, though tending to supplant it by rational and sympathetic coöperation. Imitation and sympathy, as well as intellect, are conditions of social power; and the evidence that they have arisen by the aid of natural selection is similar to, though much less tangible than, that which indicates that our bodily frame has thus arisen. It is not, however, important that I should discuss this question: it is sufficient to note the fact that our ascendency over the other creatures is associated with a flexibility of nature that comes from imitation and sympathy, and makes us apt for social change.

A man is not so much strong in himself as formed to make part of a strong whole. If reared from his birth by some wild

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creature and so cut off from those communicated arts and actions for which alone he is well fitted, he would make a poor struggle for existence, and might have to fall back upon his primitive skill in climbing trees. But in society he is strong; and the chief element of his strength is the fact that he is so far dominated by imitative and sympathetic faculties, that he adapts himself to an infinite variety of activities. He is, on the whole, a docile, conforming animal, and owes his power to his amenability.

The trend of psychological and sociological studies is distinctly toward the conclusion that the social factor in individual conduct is greater than has been perceived.[1] Every thought and every act guided by thought bears some relation to the social environment, past or present, and could not be the same if that were altogether different. A man is born with energies and tendencies, strong but vague, which, being incited and nourished by the world into which he comes, mingle indistinguishably with it to form a new organic whole, a character and a career. Imitativeness, which controls so many of our actions without our knowing it; the fear of disapproval, which leads to conformity, not only in dress and manners, but in the gravest parts of conduct; the hope of approbation, inciting aggressive spirits to perform daring deeds in the sight of mankind; hero-worship, patriotism, sympathy and love — all these give to society control over its members. The passion to be something in the minds and hearts of men is the very life of life, the fire which fuses individual energies into social power. Where our faculties touch this stream of human interest they glow at a white heat, like a piece of ore where it touches the streaming flame of the blow-pipe; the rest of us remains cold, inactive and unnoticed.

This need of approval is often called weakness and is con-

[1] It is hardly necessary to support this statement by references: the studies in "imitation," by Tarde, Baldwin and others, and Professor Giddings's theory of the "consciousness of kind" are familiar examples of the fact stated. The Proceedings of the National Conference of Charities and Corrections for 1896 contain (page 399) a paper by the present writer on "'Nature versus Nurture' in the Making of Social Careers" which treats briefly one phase of the matter.

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trasted with the supposed strength of self-sufficiency; but in fact no man with any humanity in him is self-sufficient, and the love of approbation is weakness only when it leads to inconstant behavior. It is likely to be strongest in the finest organizations, and can hardly be extirpated: to try to get rid of it is to act like a man immersed in water, who should try to thrust the water from him with his hand. The most that men can do — and this is all-important — is to choose their approvers, perhaps substituting remote or even imaginary persons for those at hand, reading great books, observing wise persons, and thus cultivating a sense of heroic opinion. Since all must be hero-worshippers, it is a great thing to have the right sort of hero.

Human nature is hard to change, but its most inveterate quality is a susceptibility to social influences. We need to distinguish sharply between nature and conduct: one is the stable basis for infinite variety in the other. Association may not change nature, but it usually controls conduct. It will hardly make an irascible man patient or a dull one clever, but may easily make one clever man an engineer and another an ingenious burglar. A career never comes by nature alone; the same nature will result in any one of a hundred careers, according to the influences that act upon it. We are bound to our fellows by heredity as to what is relatively permanent, and by influence as to what is plastic: human nature is transmitted by the one, institutions, conduct and opinion by the other.

It is this plasticity which makes each of us not so much strong in himself as fit to make part of a strong whole. Our thinking and feeling are not, like the animal instincts, predetermined to work for a single object, but are unspecialized, working according to principles of general utility toward ends set before us by the society in which we live. We are so happily contrived that humanity can progress without a change in human nature, through the peculiar constitution of nature we already have. A due measure of conservatism is, accordingly, one of the conditions of social prog-

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ress. The conforming influences are often deplored, as by Emerson, where he says that "society is in a conspiracy against the independence of each of its members," and that "to be a man is to be a non-conformist." This is true, in a way, and helpful; but it is also true that conformity is a social discipline from which no one can or ought to be entirely free. It levels up as well as down, prevents crime and anarchy as well as hinders genius, and knits men together into a strong yet tractable whole. A party of explorers who are on a difficult march must keep together, even if they cannot agree upon the best route; and most men are necessarily so constituted that they have no inclination to leave the ranks.

Human evolution, then, like animal evolution, rests primarily upon power; but power rests upon coöperation, and coöperation involves social discipline and individual amenability. Mankind is strong through good understanding, through the timely abnegation of strife, through institutions that symbolize and confirm social unity — above all through a human nature that is not only intellectual but imitative, conforming, sympathetic and capable of congregate enthusiasms.

This imitative and sympathetic human nature, which is a means to social power, implies the process of social change. Working and worked upon through the marvelous mechanism of language, it is capable of fusing men together into a fluid whole, every part of which in some way feels and responds to the motion of every other part. In this fluid are propagated an infinite number of movements of thought and action among which — by the law of chances, if for no better reason — opportune variations from time to time occur. Their oppo tuneness being in some measure perceived, these innovatic tend to be preserved and accumulated, rooting themselves tradition and tendency, and getting themselves set forth the mind and eye in laws, creeds and architecture. I of such movements that historical change chiefly cons The process is one of survival, in which the conscious tion of men is an important factor; but the conscious mostly limited to the immediate detail. It is only r

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that the general trend of social movements is beginning to be in some degree a matter of knowledge and of choice. In describing the process of social change it is suggestive to liken it to a wave or a combination of waves; but, as commonly happens in attempting to set forth social facts as analogous to physical phenomena, this figure falls hopelessly short of the truth. A reasonably clear perception of the matter can come only by a study of the process of communication — a study which is the key to the translation of the facts of social change from the language of psychology to that of history. The two things that must always coöperate are human nature and the mechanism of communication. The first is a relatively permanent factor; but the second is highly variable, and is for that reason of peculiar interest and importance. Its variations have generally been in the direction of greater efficiency, and it is largely because of this fact that the history of the past two thousand years is a record of rapid and accelerating social change.

III.

We know that man is a sympathetic, communicating animal; and I have urged that this is what makes him amenable, plastic, fit to be formed by a social environment. But what forms the environment? The evolution of environment is the most momentous change in history.

A man's social environment embraces all persons with whom he has intelligence or sympathy, all influences that reach him. If I read Aristotle, my environment extends back two thousand years; if I read the dispatches from Japan, it takes in the antipodes. That I can be influenced by the Iliad, the New Testament and other utterances of men distant from me in time and place, is due to the arts of writing, printing and transportation, just as the fact that I can receive a complex thought from my neighbor is due to the art of speech. In other words, the social influences act through a mechanism and the character of their action depends upon the character of the mechanism. The existing system of communica-

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determines the reach of the environment. Society is a matter of the incidence of men upon one another; and since this incidence is a matter of communication, the history of the latter is the foundation of all history. It is perhaps worth while to recall some of the more obvious facts of this history, and to make some suggestions as to what they mean.

The mechanism of communication includes, of course, gesture, speech, writing, printing, mails, telephones, telegraphs, photography, the technique of the arts and sciences — all the ways through which thought and feeling can pass from man to man.

Speech no doubt knit prehistoric men into groups and enabled them to emerge into history with a social nature and social institutions. But as an instrument of social organization speech has great defects; it lacks range in both time and place. It can go only where the man goes; and though it can pass from man to man, and so from generation to generation, it flows in a slender and wandering stream, limited in capacity, and diverted in direction by every mind through which it passes. What would the New Testament or the works of Plato now be if they had come down to us by this route?

For the precarious strand of oral tradition writing substitutes strong bonds, numerous and indestructible, reaching all times and countries where the art is practiced and binding history firmly together. It makes possible wide political sway, which cannot well be organized and maintained without recorded laws and precise instructions;[1] it permits the advance of science, which is a cumulative achievement that implies the hoarding of knowledge in dusty manuscripts; it is the condition of a diversified literature, for tradition, which cannot carry much, limits itself to what is most prized, chiefly stories: writing, in short, may without much exaggeration be said to underly all social enlargement and individual specialization. It extends immeasurably the environment of all persons who can read and can get

[1] I believe there is no instance of a people which has attained a definite, extended and stable political organization without the use of some form of writing. Compare Gibbon's observations in the Decline and Fall, vol. i, p. 354 (Milman-Smith edition).

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hold of the manuscripts; and it permits one to form his own environment by retaining what suits him from a variety of materials; and by opening communication with congenial minds in remote times and places. In so doing each individual, of course, becomes a center for the distribution of what he receives, and extends the environment of many others. Mankind thus attains coöperation, continuity and the capacity for rational and enduring progress.

The particular function of printing is to make communication general or democratic. So long as handwriting was the only means of record, books were costly, newspapers were not to be thought of and direct access to the stores of thought and feeling was the privilege of a few. Under such conditions opportunity was like the early sun: it lit up a hilltop here and there, but left the plain in shadow. Printing, to put it otherwise, may not make the stream of knowledge deeper or improve the taste of the water, but it does open a path along the margin and give every one a cup from which to drink. With popular education, which is its natural complement, it forms the principal free institution, without which no other sort of freedom could long endure, and by the aid of which we may hope to gain more freedom than we have.

It is well worth while to reflect what these changes mean to the individual man, born with the aptitude for indefinite development through an imitative and sympathetic nature. Consider, for instance, a group of our ancestors of several thousand years ago, comparatively small, without the art of writing and with little knowledge of other groups. Primitive life is a field fertile in controversy and one not likely to be exhausted; but most students will admit the probability that our distant forefathers lived in small societies, were unlettered and had the vaguest notions about the rest of mankind. Such groups carried on with one another a true struggle for existence; but within each of them — that is, within the range of possible good understanding — there was an active social life. Mothers loved their children and men fought for their chiefs; the thoughts and acts of all were bound together by imitation, the need of approbation

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and the communicative motives in general. In this social medium were propagated such movements of change as its dimensions permitted. But think of the narrowness of those dimensions, of the paucity of models for imitation, of the extreme vagueness of knowledge regarding the great men of the past and of the total ignorance regarding those of other societies! A meagre environment limited the development of innate tendencies and capacities, and the comparative sameness of thought and action reflected the narrowness of the general life.

In such a state of things all the wider social relations must be either hostile or authoritative. Since communication is the precise measure of the possibility of social organization, of good understanding among men, relations that are beyond its range are not truly social, but mechanical. In justice to the past we must recognize that before the rise of printing and telegraphy it was impossible for the mass of people in any large state to have a free and conscious relation to the social whole. The basis for a social consciousness did not exist. People in general could not comprehend what was going on, and their actions were necessarily regulated by authority. The peasant, the common soldier, could not coöperate in the larger social movements except as a truck horse coöperates in movements of trade.

If two persons who cannot understand each other come in contact, three things are possible: they can separate, they can fight or one can enslave the other. In the same way, the social groups of the ancient world could ignore one another, wage war or be bound by coercion into a mechanical whole. As the first was usually impracticable, and as mechanical union proved stronger than none, it was the third course that commonly prevailed. This was especially the case after communication was advanced to such a point that the organization of extensive military despotisms became practicable. In antiquity a large free state could not be formed, and a small one could not maintain itself.

If we put together these things, this poverty of influences and this habit of war that could be replaced only by something

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in the way of servitude, we have gone far in explaining the known differences between our remote forefathers and ourselves. They may have been very unlike us, but it is not necessary to suppose that they were, in order to explain their leading unlike lives.

To the man of to-day society, tending now to become a coöperating whole through that extension of knowledge and sympathy which has come with the rise of communication, offers a selection among many environments. In the relation between himself and the rest of mankind he takes more and more an active part, accumulating the elements of a characteristic environment by the working of elective affinity. One may be an imitator — as indeed all must be — and yet unfold, through imitation, a character different from that of every one else. The breadth and diversity of life, dependent upon communication and daily widening before our eyes, tends, in short, to set man free by opening to his sympathetic and conforming nature a "proud choice of influences." He is not merely, as in primitive times, a member of a social group which tends to shape his thought and action; he is the point of intersection of many groups, each of which, though dispersed in time and place, has a real and definite influence upon him. Nowadays one is not less dependent upon social influences than formerly, but he is less dependent upon the particular ones that happen to be nearest him. Every book, every newspaper, every work of sculpture, painting or music to which one has access, every person or place brought within his reach by the facility of travel, is a shop which he may enter to examine the goods and buy if he will. A million environments solicit him; there is eager competition in place of monopoly.

It is upon this multiplicity of accessible influences, and not upon any radical change in human nature, that the present variety and comparative freedom of individual development chiefly rest. If one looks at the circle of his acquaintances he sees nothing of the sameness that prevails among savages; each man has distinctive opinions and modes of action, and so appears to stand by himself. This deceptive appearance is due to the fact that social relations are no longer con-

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trolled by mere contiguity. Through the arts of intercourse association is throwing off the gross and oppressive bonds of time and place, and substituting congenial relations of sympathy and choice. So, if a man seems to stand alone, it is mostly because he stands with those who are not visible; if he seems not to keep step with the procession, it is probably because, as Thoreau said, he hears a different drummer. We know little of the influences that formed his early imaginations, or of those persons whose approval he now desires and to whose examples and opinions he tries to conform his actions. They are often far distant — his parents and early friends, perhaps, or the leaders of his profession, or book-people — but the fact remains that character and conduct are nourished upon social influences. A reading of autobiographies, or a perusal of those private records which people carry in their memories, would show that men are still imitators and hero-worshippers. This is particularly true of children, who spend much of their mental life in imagining scenes wherein by glorious actions they gain the applause of some persons they admire. And of course the modes of thinking and acting that originate in sympathy and admiration tend, like everything else we do, to become habit, and to persist amid circumstances very different from those in which they began, seeming then to come from self-sufficient personality.

The same conditions favor also the more conspicuous forms of individuality — that is, originality and genius. Originality is not something independent of surroundings, but rather a characteristic way of reacting upon them. Let a man be as original as you please, he can unfold and express his originality only through such influences and materials as are accessible, and the number and variety of these are matters of communication. "We are indeed born with faculties," said Goethe, who gave lifelong study to this matter, "but we owe our development to a thousand influences of the great world, from which we appropriate to ourselves what we can and what is suitable to us." In order to have genius it is essential that a remarkable child shall be born into the world; but an outfit of natural

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faculties, however remarkable, is only one of two sets of factors whose product is a career. A gifted child, like an acorn, has indeed the capacity of marvelous growth, but can come to nothing unless it finds fit nutriment. The idea of a necessary antagonism between individuality and association is an illusion. The two are mutually dependent : they have always developed, and always must develop, side by side. As a rule, it is not too much association that cramps us, but the wrong kind.

Finally, it is not hard to see how this enlargement of intercourse has affected the processes of social change. Let us go back to the comparison with waves, which, after all, is better than none. As regards the transmission of influences, primitive societies may be likened to narrow strips of water. They extended more in time than in place, but even in the former direction were liable to be cut off by conquest or decay ; they were connected with one another by the shallows and marshes of occasional intercourse and by quickly subsiding freshets of federation. Social change was necessarily local, like the waves on such small waters. Modern society, on the other hand, is more like the uninterrupted ocean, upon which the waves of change meet with no obstacles except one another, and roll as high and as far as the propagating impulse can carry them. Thus, to take a conspicuous instance, certain movements in art, letters and philosophy, originating we scarcely know how or where, but attaining great height among the Greeks, rolled on over the unconscious Middle Ages till they struck the contemporaries of Petrarch and thence were propagated in widening circles to the present time. The invention of writing opened the world to the competition of social institutions very much as maritime navigation opened it to the competition of races. The field was enlarged, and all movements proceeded on a great scale.[1]

This extension of the medium of change is accompanied by

[1] There is no better illustration of this than the rise of vast religious systems based upon the recorded lives and maxims of their founders. It is quite possible that individuals of transcendent character appeared in prehistoric times; but the imitation of them could not be organized into extensive and enduring systems without the aid of authentic records.

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an equally remarkable differentiation within it, implied in what I have already said about the growth of individuality. There are as many social media as there are specialized groups of sympathetic and communicating individuals, and in choosing his environment a man chooses what groups he will belong to. Each of these groups or media is subject to movements more or less peculiar to itself; it has in some measure its own opinions, institutions and traditions. So, if one wishes to liken modern social movements to waves, he must conceive an indefinite number of wave-transmitting fluids, interpenetrating one another as the light-bearing ether interpenetrates the sound-bearing air; each of these transmitting most readily undulations originating in itself, yet feeling the influence of those originating in the others; each fluid by itself, as well as the united whole, traversed continually by a multitude of waves having every imaginable difference in force, period and direction. Even when so stated the comparison is still inadequate in various ways, chiefly in that it does not suggest the active part that may be taken by individuals. It represents what would happen if each one were in equilibrium, with every congenial relation established; when in fact each of us is continually stirring about more or less in search of the congenial — resisting, refracting or augmenting the social impulse in a way peculiar to himself. Yet, so far as men have like natures that come into sympathy through communication, they really form a sort of a fluid in which impulses are propagated by simple suggestion or contact. If two persons of like feeling for form and color stand before a painting, they and the artist are one through the picture.

The freer development of individuals involves, of course, a freer development of the social order; inasmuch as relations of choice — relations that suit the feelings of men — tend to spread and to prevail over those of hostility or coercion. It is the tendency of communication to give human nature a fair chance, levelling before it the barriers of ignorance, blind hostility and constraint of place, and permitting man to organize his higher sympathetic and æsthetic impulses.

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Within the past fifty years there have been developed new means of communication, — fast mails, telegraphs, telephones, photography and the marvels of the daily newspaper, — all tending to hasten and diversify the flow of thought and feeling and to multiply the possibilities of social relation. The working of these agencies is too important to be discussed hastily, and to discuss it fully would carry me too far; I shall therefore only point out that they make all influences quicker in transmission and more general in their incidence, accessible at a greater distance and to a larger proportion of the people. So far as concerns the general character of social change, the effect may be described as a more perfect liquefaction of the social medium. A thick, inelastic liquid, like tar or molasses, will transmit only comparatively large waves; but in water the large waves bear upon their surface countless wavelets and ripples of all sizes and directions. So if we were to compare the society of to-day with that of fifty years ago, we should find that great changes are somewhat facilitated, and that there is added to them a multitude of small changes which in former times could not have extended beyond the reach of personal contact. Light ripples now run far: the latest fashion in coats or books permeates the back counties and encircles the earth.

The process of change that I have described involves selection, and is perhaps as natural as anything else. Hence we may, if we choose, call it natural selection. It comes about through the competition of influences and the propagation of opportune innovations in thought and action. The selective principle, the arbiter of competition, is ever human nature — but human nature conditioned in its choices by the state of communication, which determines what influences are accessible, as well as by the constraining momentum of its own past.

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SOME PROBLEMS OF CLASSIFICATION IN PUBLIC FINANCE.

UNDER the extreme influence of the historical movement in political and economic science, it frequently happens in original work that more attention is paid to the collection and mere presentation of material than to careful, thoughtful analysis. In certain quarters the notion seems to prevail that originality consists solely in digging out of some obscure hole a certain number of facts. Investigation of the sources is, no doubt, valuable and necessary, but it is a mere preliminary step; and the new facts learned are useful only when properly analyzed and explained, or when applied to the explanation of already known principles. One of the unfortunate consequences of the mistaken notion has been a tendency to belittle the importance of correct, logical, scientific classification. Careful analysis and correct classification are, however, the only means of turning any mass of knowledge into a science. It is therefore gratifying that attention has recently been directed to some of the difficult problems of classification in public finance.

In the *Quarterly Journal of Economics* for April, 1893, Professor Seligman published an article on "The Classification of Public Revenues," in which he argued strongly for a division of public revenues into four main classes: (1) prices, (2) fees, (3) special assessments and (4) taxes in the narrower sense of the term.[1] Two years later he saw fit to modify the original scheme by the division of the first category into two parts, distinguishing quasi-private prices from public prices. In his recently published *Essays in Taxation*[2] the views expressed in

[1] The principles upon which these divisions are made are somewhat the same as those suggested by Professor Cohn in his Finanzwissenschaft, pp. 118–126, on the basis of a previous analysis of expenditures, pp. 104–118; see especially the summary, pp. 117, 118.

[2] New York and London, 1895.

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the second article[1] were restated and may now be regarded as his settled opinion.

The definitions proposed for these classes are as follows :

A quasi-private price is a voluntary payment made by an individual for a service or commodity sold by the government in the same way as a private individual would sell.

A public price is a payment made by an individual for a service or commodity sold by the government primarily for the special benefit of the individual, but secondarily in the interest of the community.

A fee is a payment to defray the cost of each recurring service undertaken by the government primarily in the public interest, but conferring a measurable special advantage on the fee-payer.

A special assessment is a payment made once and for all to defray the cost of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the particular benefit accruing to the property-owner.

A tax is a compulsory contribution from the person to the government to defray the expenses incurred in the common interest of all, without reference to special benefits conferred.

The main features of this proposed classification seem to be so simple and logical, and seem to recognize so clearly the operation of great historical tendencies, that their general usefulness to the student of public finance for all scientific purposes cannot be disputed. It would, therefore, be extremely desirable if they could be universally accepted.

Professor Bastable, however, in the second edition of his *Public Finance*,[2] refuses to accept the suggestion, and among other things denies (1) that there can be only one correct classification, and (2) that there is any necessity for distinguishing between fees and taxes.[3] Professor Bastable's first

[1] *Quarterly Journal of Economics*, April, 1895.

[2] See pp. 153–156.

[3] The points omitted are (*a*) the discussion of fines and (*b*) the objection to special assessments. The former is omitted because of the insignificance of the revenue from fines and penalties, which, while not warranting their omission from a larger work, permits us to omit them in a short article. The latter is omitted because Professor Bastable's criticism seems to be partly valid, as will be seen, and partly based on an entire misconception of the nature of these charges, which it would take too much space to explain here.

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objection is to the assumption — which, although not definitely made by Professor Seligman, is yet implied in the criticism of older classifications — that there is but one correct or natural classification. Professor Bastable claims that the sole consideration in the choice of a classification in such subjects as "grammar, jurisprudence, legislation and finance" is convenience for the immediate purpose in hand. It does not seem that this objection is altogether valid. For some subordinate purpose, it is true, temporary convenience may warrant abandoning the strictly logical classification; but there is a scientific or logical necessity for recognizing, whenever present, a direct line of development. In the study of organic life it is unscientific to intermingle the recent with the older species: it is equally unscientific in the study of legal institutions or economic life to confuse the old and the new, or to classify in such a way as to hide the connecting links between them. Comparative philology, historical jurisprudence and the science of finance have succeeded in establishing certain general principles of development, which are for them what the development of the species is for natural science. Any classification which ignores the sequence of this development, or which omits important and characteristic steps, cannot claim to be thorough and scientific; and temporary convenience will not excuse the refusal to accept the results of a truly scientific analysis. When Professor Bastable claims that it would be inconvenient to split the complex revenues from such public enterprises as the post-office into prices, feês and taxes, because the parts would be distributed over several different parts of his work, he is making a plea which, if valid, denies the value of most scientific analysis. It has never been regarded as impracticable, for any such reason, to analyze the revenues of an agriculturist who is the recipient of rent, interest and wages in one income. In fact, scientific thought demands such analysis.

Professor Bastable makes an equally untenable contention when he urges as an objection to the term "fee" that it is not commonly used in the sense given it by Professor Seligman. Does not economic science abound with terms which have a

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strictly scientific meaning, different from that in common use? Take, for example, the fundamental terms value, rent, wages — in fact, almost any of the economic terms. A word adopted from daily life by science must be deprived of some of its "extension" for the purpose of giving it a perfectly clear "intension." Even if we concede to Professor Bastable that this term is not altogether satisfactory for expressing the idea intended to be conveyed, we must insist that classification is something more than terminology. What concerns us is the idea as defined.

Let us, then, inquire whether the conception of fees, as defined by Professor Seligman, is of such a character that the failure to recognize it in a scientific analysis is open to severe criticism? There are three distinct phases in the development of the attitude of men toward any public function. At first, when the function is new, they do not recognize the existence of any common benefit. The charge made — that is, the revenue collected — is governed by the consideration of the special benefit, just as in the case of a private enterprise. Later, men awaken to the fact that this activity, instead of benefiting special individuals alone, benefits society as a whole; and they remove a part of the special charge, collecting the balance of the revenues needed to carry on the function in some other way. Still later, they cease to regard the special benefit as a proper measure of any special charge, but rather collect the whole of the money needed in some other way — usually by a general levy on the resources of the whole of society. This development may be traced in the charges made for almost all of the functions now performed by the state, where it was possible to conceive of beginning with a price. Such is, for example, the history of the revenues for maintaining the courts,[1] roads, canals, educational institutions and the administrative supervision of industry and commerce. Moreover, in spite of the comparatively recent growth of large cities and the newness of many municipal enterprises, the charges for services rendered by such enterprises already show

[1] As Bastable correctly shows, 2d ed., pp. 72, 73.

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the same tendency. In short, in every case where it is possible in the beginning to assume that there is a special benefit conferred, the special benefit is at first made the ground for a special charge. As time goes on, however, that special charge is lessened and finally removed. Professor Bastable himself recognizes and decries this tendency, and uses it as an argument against state ownership of industrial enterprises.[1] Whatever we may think of the desirability of such a development, still the fact remains. Governments do from time to time assume new functions; and when they do, these functions all become subject to the same tendency in development. Scientific analysis must take cognizance of each step in the evolution. The difficulties encountered by the courts in deciding upon the validity of the Wright irrigation act in California are illustrative of the difference in the attitude of men toward old and new functions. The decision of the lower court was practically that the cost of performing this new function (irrigation) must be borne solely by those benefited. This is essentially the attitude usually assumed toward all new functions. But the decision of the supreme court, reversing that of the lower court, passes over any preliminary period, and makes this function at once of sufficient common benefit to justify the collection of charges not measured by the particular benefit.[2]

Not only can it be proved that this development has actually taken place, and that all of these different sorts of revenues are present to-day, as Professor Seligman so well shows, but it can be shown that the tendency to the same development will necessarily appear in the case of every new function, on account of the character which these functions assume in public hands. If any new function or industrial enterprise, when first assumed by the government, is not already a monopoly, it soon becomes one. The same reasons of public policy which led the government to enter upon the new field necessitate the reservation of the whole field as soon as the government is able to fill it.

[1] See p. 190.

[2] In this brief illustration nothing is considered but the question of taxation. The case also involved intricate questions as to the ability of the legislature to create new districts endowed with legislative and taxing power.

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The principles which govern the adjustment of charges in the case of monopolies are more akin to those of taxation than are those governing competing enterprises. The transition from charges fixed by "what the traffic will bear" to taxes is easy. To take a concrete example, let us suppose that a city sets up an electric-lighting plant. At first it may submit to the competition of private companies or divide the field with them. But sooner or later it will regard this competition as an infringement upon public rights and will abolish it. A private corporation, other things being equal, cannot compete with the state, for the fact that the government can, if necessary, supply any deficit by taxation makes it an unconquerable competitor.[1] Having acquired the monopoly, there is no other way of regulating the rates than by distributing the total costs according to the well-known principle of "charging what the traffic will bear." The plant in question passed into public hands in order to bring about lower rates or better service, and that very purpose brings the revenues down to costs. In estimating the costs there is, as Professor Bastable himself shows,[2] a natural tendency for public officers to ignore certain elements which a private person would recognize as important. Thus, interest upon public moneys actually invested, but not represented by outstanding bonds, is generally ignored.[3] The charge thus made, being below cost, is what we call a fee. As Professor Seligman shows, such a charge differs materially from a tax, for there is a definite counter-service. It differs from a price in that it is permanently set below cost. It is not an "economic receipt," as Professor Bastable would call it, because it is not governed by ordinary economic principles. Further, to call by the name "casual revenues" a category of public income which is so large, and which renders possible some of the most important new functions now per-

[1] *Cf.* Hadley, *Yale Review*, February, 1896, pp. 399, 400.

[2] See p. 212.

[3] My attention was recently directed to one case, that of the city of Alameda, California, where the allowance made for the cost of the street-lighting system, paid from general taxes, is so large that the charges for house lighting are very much below cost.

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formed by states and municipalities, is to belittle the importance of these revenues; for this name denies that they have any peculiar common characteristics.

A proposal to free consumers from such special burdens by adding all the costs to the general taxes will not yet be seriously entertained. But if such a proposition were made, it would not seem more unreasonable to the citizen of to-day than the present method of paying all the costs of building and maintaining roads at the general expense must have seemed to the citizen at the time when the roads were first taken out of the hands of turnpike trusts and companies. The tendency to change from the fee principle to the tax principle has a further justification. As soon as these enterprises become monopolies in public hands, the principle of adjusting the charges among the different users is that known as "charging what the traffic will bear" — a principle nearly akin to that by which taxes are distributed. According to this well-known principle, which underlies the classification of goods by railroad companies in fixing freight rates and of mail matter in fixing postal charges,[1] a burden is practically distributed among those who are to bear it in accordance with their abilities, which may be indicated in various ways. It must not be forgotten that the very reason for the maintenance of this principle is that, by virtue of reducing the charges made upon those of the least ability, the charge to those of most ability is less than the cost of the service to them would be if a uniform charge were made which those of less ability would be unable to meet.[2]

The feasibility of fixing the tariff of rates according to the costs of the particular services becomes less as the proportion of the costs consumed by the fixed charges grows larger. For example, in the case of a monopoly furnishing the water supply of a city almost all costs (provided the supply be adequate) are

[1] See Hadley, Railroad Transportation, ch. vi; Seligman, "Railway Tariffs and the Interstate Commerce Law," POLITICAL SCIENCE QUARTERLY, vol. ii, nos. 2 and 3.

[2] It would seem that a justification of progressive taxation might be developed from this principle.

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fixed. The costs to the monopoly consist of: (1) interest on the purchase price of the supply; (2) interest on the cost of the reservoirs, both collecting and distributing, of the mains and distributing pipes and, if needed, of the pumping-stations and engines; (3) repairs. In the case of a pumping system there is a small item of cost which varies somewhat with the consumption; but in the case of a gravity system no item — except, perhaps, that of wages for clerical hire — varies with the consumption. In the case of water rates, then, there is no necessary connection between the amount consumed and the charge; and rates can be justly fixed only by an apportionment which disregards the exact amount consumed and recognizes some measure of the relative ability of the various consumers. It costs the monopoly no more to furnish one man with five hundred gallons a day than it does to furnish another with four hundred gallons. If the consumers increase fifty per cent, but are supplied from mains already constructed, the costs certainly do not increase five per cent, and the classified rates may be reduced nearly one-half. Each person benefited by the system should be made to pay on a different basis from that by which he pays for (say) milk, where the cost varies almost directly with the amount consumed. Practically the costs should be distributed among the various users according to some test of their respective abilities. This is, then, very much like a special tax upon a certain class of persons; and if the monopoly is in public hands, it is a simple step from a special to a general tax.

It seems, therefore, that the three stages represented by prices, fees and taxes are historical facts, and must in the nature of things be found in every case where, at the outset, a price is possible. Of course the government may assume new duties in line with the older functions, without at first charging a price. In that case one or more stages may be passed over. The three main features of Professor Seligman's classification are, however, established.

But how about special assessments? Do they form a class coördinate with fees and taxes? Do they form a necessary

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step in the evolution of public revenues? Does history show that the charges for any functions pass from fees through special assessments to taxes, or from prices through special assessments to fees? Or do these charges not stand, as do all other fees, between prices and taxes?

It seems incontestable that special assessments are simply one kind of fees. To be sure, they form an independent class of fees, but they are logically fees. Professor Seligman, after admitting that they might be so classified, urges, as the main reason for distinguishing them from fees, that they are of so much importance — in the United States, at least — that they are worthy of special prominence in the classification. This abandonment of the strict logic of the analysis for the sake of calling attention to a special category is as open to criticism as Professor Bastable's refusal to recognize a scientific classification.

In pointing out "in what respects special assessments differ from fees," Professor Seligman says: "In the first place, special assessments are levied only for specific local improvements; fees may be levied for any services."[1] But any one fee is levied only for one service: the field of operation of any one fee is always restricted.

"Secondly, special assessments are paid once and for all; fees are paid periodically according to each successive service." But a great many other fees as well as special assessments are paid once and for all. So far as a particular case is concerned, all court fees are so paid. The special assessment is paid for a particular improvement; if another be made, another assessment is laid.

"Thirdly, a fee is levied on an individual as such; a special assessment is levied on an individual as a member of a class." But even if there are no other fees assessed upon a class (which is not true), this is at best a characteristic showing a difference in species, but not a difference in genus. It is a reason for making this a special class of fees, but not for separating it from fees.

[1] Essays in Taxation, pp. 289, 290.

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"Fourthly, a special assessment must always involve a benefit to real estate; a fee is paid for a service which may benefit other elements than real estate, such as personal property, or other attributes of the individual without any reference to property." This is simply begging the question, for the very wording admits that some fees may benefit real estate only — for example, the fee for recording titles to land.

There is, then, no good reason for raising special assessments to the same plane as the other three great natural classes. There is between fees and special assessments no such clear line of distinction as there is between fees and taxes, or between prices and fees. Although special assessments differ from other fees, they do not differ sufficiently to warrant putting them into a special category.

Professor Schwab, in reviewing[1] *An Introduction to Public Finance*, by the present writer, criticises the subordination of special assessments to fees on the ground that the former "offer the only cases in which the 'benefit theory' is applicable." This sweeping statement hardly holds true, for it is the very essence of every price and of every fee that the charge is made upon the person specially benefited. Benefit is always the justification of the tax or of any public charge; but benefit is the exact measure of the charge only in the case of prices, the partial measure in the case of fees, and ceases to be a just or feasible measure in the case of taxes.[2]

In the main — that is, with the exception of his treatment of special assessments — Professor Seligman's classification seems to stand; and it is extremely desirable that it should be widely accepted and applied. It reveals the essential characteristics of public revenues, and in its general usefulness resembles the well-worn division of individual economic receipts into rent, interest and wages. There is, moreover, another peculiar advantage in adopting this classification. What we have obtained is more than a mere classification of revenues: it is an analysis

[1] *Yale Review*, November, 1896, p. 339.

[2] In the opinion of the writer the distinction between the justification of any charge and the measure of that charge cannot be too often restated.

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of all the fiscal activities of the state. Hence it applies to every part of the science of public finance — to public expenditures, to fiscal administration and partly even to public debts.

Public expenditures fall so easily into the same three classes that it is sufficient merely to state them: (1) those which are regarded as conferring only special benefit on the individual, and are undertaken solely in his interest; (2) those which are regarded as conferring a measurable special benefit on the individual, but which at the same time benefit all society; (3) those which are regarded as conferring only common benefit, or special benefit treated as such.

The activities of the fiscal administrative bureaus fall naturally into place in the same way.

The application of this principle to the analysis of public debts, while equally simple and logical, requires more explanation. The analysis of public debts should reveal the kind of credit upon which each important category rests. Public credit, far more than private credit, is dependent upon the trust the would-be lender reposes in the ability and willingness of the debtor (state) to pay. Such ability and willingness are attested by the relation between the creditor's claim and the revenues. In the case of those debts which create a direct claim upon specified revenues the classification will simply follow that of the revenue in question. The only difficulty arises when the claim is not upon specified revenues, but upon all revenues. Here it may be necessary to follow some other principle. Possibly the best method will be to divide these debts according to the nature of the promises — that is, whether for principal only, or for principal and interest, or for interest only. This is the only case to which the proposed system of analysis is found to be inapplicable.

The fact that Professor Seligman's classification of public revenues is based upon a principle which can be logically applied to the analysis of all parts of the science of public finance is further confirmation of its correctness and usefulness. This strengthens the hope that it may be very generally adopted.

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AN ANALYSIS OF AGRICULTURAL DISCONTENT IN THE UNITED STATES. III.

V. Four Remedies for the Agricultural Depression Considered (*continued*).

3. *An export bounty upon agricultural staples.* — Whatever acquaintance the public may have with this proposition is due very largely to the energy, enthusiasm and time devoted to its advocacy by one man, Mr. David Lubin of Sacramento, California. According to Mr. Lubin, our protective tariff system is mainly responsible for the economic difficulties of the American farmer. The producer of agricultural staples, he contends, receives free-trade prices for what he sells, but for what he buys is compelled to pay prices enhanced by a protective tariff. For example, Mr. Lubin has said: "The producers of agricultural staples under the present system must foot the entire cost of protection, which, at a conservative estimate, must foot up to $1,000,000,000 a year." The object, then, of a system of bounties upon exports of agricultural staples, Mr. Lubin tells us, is to restore to the farmer that of which protection unjustly deprives him.

The determination of the truth or falsity of Mr. Lubin's statement as to the effect of the tariff on the farmer does not concern our present purpose. Admitting it to be correct, however, what is to be said of his remedy? Were it to accomplish all that Mr. Lubin claims, it would simply restore to the farmer $1,000,000,000 of which he is annually deprived by protection. When this has been done, who is the gainer by the transaction? To ask the question is to answer it. Mr. Lubin's argument resolves itself into this: Society is to bear the expense of the administrative machinery necessary to a process by which one class collects money from another only in turn to pay it back. It is clear, therefore, that whether an export bounty upon

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agricultural staples be wise or foolish, the argument used by Mr. Lubin in its support may be dismissed without further comment.

It is worth while, however, to consider the proposition itself, not only from the farmer's point of view, but also in its political and financial aspects, and in reference to its bearing upon economic and social progress and upon the wisest adjustment of the wealth-producing energy of the nation.

The manner in which an export bounty is expected to benefit the farmer is as follows: The bounty is to be paid directly to the exporters of farm products; competition among the exporters will raise the price of the quantity exported to the extent of the bounty; the quantity bought to supply the home market will command the same price; consequently, the value of the entire product will be artificially enhanced, and the profits of the farmer correspondingly increased.

It is a serious question, however, whether this can be accomplished without so stimulating production as to defeat the avowed object. The experience of European governments with bounties upon the exportation of beet sugar clearly indicates the probability of such a result. The insidious origin of this policy in Germany is an interesting episode in economic history.[1] Other nations of Europe, such as France, partly to keep their own sugar producers from being at a competitive disadvantage and partly through national jealousy, inaugurated a similar policy, until most of the nations of the Continent have vied with each other in favoring the sugar industry.[2] The result has been an enormous increase in the beet-sugar product, from 2,223,000 tons in 1885–86 to 4,975,000 in 1894–95, accompanied by such a reduction in price that the industry is seriously depressed. Producers complain that the prices received do not cover the cost of production,[3] and it has even been proposed to establish a sugar bank to relieve distressed refiners and beet-root growers.[4] In addition to the loss sustained by the pro-

[1] *Quarterly Journal of Economics*, vol. vi, 1891–92, pp. 96, 97.
[2] *The Nation*, vol. xlii, 1886, p. 421; vol. xlv, 1887, p. 165.
[3] Wells, Recent Economic Changes, p. 302.
[4] *Public Opinion*, September 26, 1895, p. 396.

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ducer, the bounty system upon sugar costs the taxpayers of Europe about $25,000,000 per annum.[1] Consequently, as a reward for this expenditure of the public treasure, the sugar producers of Europe have been led to do business at a loss, while the other nations of the world have had the benefit of cheap sugar. In addition to the economic evils which the policy entails, the fact that one nation cannot abandon it independently of the others, without leaving its own producers at a competitive disadvantage, is a matter that should not be overlooked. The overthrow of the system is thus subject to all the delay and uncertainties of international agreement.[2] This experience of European nations certainly indicates that a policy of export bounties upon agricultural staples in the United States would stimulate production in our own country; but it also indicates that other food-exporting nations would be led to adopt a similar policy and that in consequence no advantage would accrue to the American farmer.

As regards cotton, it is almost certain that an export bounty would not permanently enhance the price. The proof of this proposition lies in the fact that the United States is the most important single factor in producing the world's cotton supply. Her annual product is fifty per cent of that of the entire world.[3] Of England's cotton importations, 1890–93 inclusive, seventy-six per cent came from the United States;[4] and during the same period sixty-nine per cent of all importations into Europe had the same origin.[5] These facts not only reflect the extent to which the world is dependent upon the United States for its cotton supply, but also indicate that the low prices of recent years are to be attributed to the enormous scale upon which she has been engaged in the production of this commodity. The cotton famine during the Civil War, when production in the United States was largely suspended, conclusively shows that the size of the American crop is the principal factor in

[1] Consular Report, April, 1895, vol. xlvii, No. 175, pp. 610, 611.

[2] *Saturday Review*, vol. lxiv, 1887, pp. 725, 726, 847, 848.

[3] Senate Report 986, 3d Session, 53d Congress, Committee on Agriculture and Forestry on the "Condition of Cotton Growers in the United States," *etc.*, part i, p. 506. [4] *Ibid.*, part ii, p. 156. [5] *Ibid.*, part ii, p. 163.

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determining the price. In 1864 cotton sold for $1.00 a pound; but after the war planting was resumed, and the European supply increased to such an extent that stocks began to accumulate in the ports, and prices declined with the annually increasing crop in this country.[1]

The plea cannot be made that an export bounty is necessary to give us a commercial advantage over competitors in the growth of cotton, for we are already easily supreme in this regard. Moreover, the enhancement of the price of cotton by means of an export bounty will not increase the world's demand to the extent of a single pound, save as it cheapens the price. Its only influence will be to augment the production of a commodity of which there is already too great an abundance, to depress its price still further and to defeat the very object for which the bounty is proposed. It is even probable that, with the world's markets overstocked and the home market dull, because of the enormous crops in the United States, those engaged in the export trade would underbid each other in a struggle for its control, and the bounty would thus be handed over as a gift to foreign buyers of cotton. From the point of view of European importers, manufacturers and consumers of cotton, such a policy will doubtless be regarded with unconcealed favor; but from the standpoint of an American, the policy of expending the public treasure in the interest of a class of producers, only to leave them in no better plight than they were and to furnish the other nations of the world with a raw material at less than its normal price, can hardly be regarded with favor.

What has been said concerning cotton also applies very largely to corn. To even a greater extent than in the case of cotton, the volume of the American crop fixes the price. As to competition with other countries, there is none worthy of serious consideration. Less than four per cent of the yearly crop of corn is exported,[2] while something like eighty per cent is yearly consumed in the very county where it is grown.[3]

[1] Bulletin No. 9, 1895, Miscellaneous Series, Statistical Division, Department of Agriculture, "Production and Price of Cotton for One Hundred Years," pp. 14, 15.

[2] Statistical Abstract, 1894, p. 266.

[3] George William Hill, *The Chautauquan*, vol. xvi, 1892–93, pp. 293–298.

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The price is, consequently, dependent not only upon the American supply, but also chiefly upon the American demand. Furthermore, the export demand for corn is not increasing. Notwithstanding special efforts made to introduce corn in various forms as a food product among European peoples,[1] the average annual exports for the ten years preceding 1895 were less by 7,400,000 bushels than for the ten years preceding 1885.[2] During these two decades the greatest export movements have occurred as frequently in years of moderate as in years of exceptionally large crops.[3] Under such circumstances, in the competition among exporters to supply the foreign demand, an export bounty upon corn would be quite as likely to go to the foreign consumer as to the American producer. Such a result is indicated by the experience of Nebraska farmers in 1884, 1886 and 1890. In those years railway rates upon corn from points in Nebraska were reduced in deference to the demands of farmers, with the effect, however, not of increasing the price to the producer, but of lowering it to the consumer.[4] Even if exporters were induced by the bounty to offer a higher price for the supply of the export trade, that trade seems relatively too insignificant to affect materially the *farm* price of corn in the United States. Assuming that the price might be momentarily enhanced by the bounty, the mere fact that the area devoted to corn cultivation is capable of indefinite extension leaves little reason to suppose that such an advance would be permanent.

The cases of hay and oats are in nearly all particulars analogous to that of corn. An analysis of the probable effect of an export bounty upon wheat and meats, also, would lead to similar conclusions.

From the political point of view, a system of bounties on the exportation of agricultural staples is clearly impracticable in the United States. Even if such a scheme were once in operation, there would be no hope of its permanence. It would be

[1] George William Hill, *The Chautauquan*, vol. xvi, 1892–93, p. 294.

[2] Statistical Abstract, 1894, p. 266. [3] *Ibid.*

[4] Report of Nebraska Railway Commissioners, 1886, pp. 83, 84, 96. *Railway Age*, vol. xv, pp. 88, 103, 193, 710.

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denounced as embodying class legislation. Many farmers, disappointed at the small benefits accruing to them from the measure, would give it but indifferent support. If it raised prices, the hostility of the non-agricultural portion of the population would be aroused against it. The short life of the sugar-bounty clause of the McKinley tariff act of 1890 illustrates how such measures fare under a popular government. Under a despotism a policy of bounties on exports might be feasible; but with a government that so quickly reflects a change in public sentiment as our own, there would be no assurance that such a measure would endure for any considerable length of time.

Nor does the policy we are considering present a more favorable aspect from the financial point of view. Under existing circumstances, when the national revenue is inadequate to meet the needs of the government, the inauguration of a bounty policy would seriously embarrass the treasury and necessitate a reconstruction of our whole fiscal system. To make good the increased deficit it would be necessary to enlarge the excise, to place imposts upon sugar, tea and coffee, and probably to increase the protective features of the tariff; though the last device, according to Mr. Lubin, would take from one pocket of the farmer what the export bounty had lodged in the other. To tighten thus the screws of the machinery of taxation in the interest of a class would run counter to the prejudices of the people and would thereby violate a fundamental principle of finance.[1] Nor is this all. The volume of agricultural exports varies from year to year with the foreign demand and other conditions beyond the power of government officials to control or forecast. The exportation of wheat in the fiscal year 1892, for example, was more than three times that of the year preceding.[2] There was also an enormous and unforeseen increase in the exports of farm staples during the calendar year 1896, as compared with those of 1895.[3] The impossi-

[1] J. R. McCulloch, Taxation and Funding, p. 18.
[2] Statistical Abstract of the United States, 1895, p. 169.
[3] *Public Opinion*, December 31, 1896, p. 855.

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bility of adjusting appropriations to the actual requirements of an export bounty upon agricultural staples is therefore apparent. Such a bounty is thus open to the further serious objection that it would greatly increase the difficulty of maintaining a proper balance between the annual income and the expenditure of the nation.

The principle which lies at the basis of a bounty upon agricultural exports is, furthermore, antagonistic to economic and social progress. It looks with disfavor upon the introduction of improvements, whereby production is cheapened and human wants are more easily satisfied, and places the interest of a class above that of society in general. Carried to its logical conclusion, the principle would justify some kind of state aid to those in every industry, who, through being undersold, are subjected to financial loss. Within the past fifty years the machinery employed in the iron, cotton and woolen industries has several times been rendered worthless, save for use as old iron, by the introduction of cheapening appliances in production. Nor has the process stopped. The owners of machinery that is, so to speak, invented out of existence suffer loss; but society, being enabled to satisfy its wants more easily, gains. That the advantage to the mass warrants disregard of the detriment to the few, is a familiar idea in respect to other industries than agriculture. Society welcomes cheaper transportation, cheaper clothing and lower prices for all of the products of city life; and when such changes occur the public looks on with unconcern and even with some degree of pleasure — especially if those upon whom such economic progress entails financial loss are the stockholders in some corporation. Certainly, then, the process which cheapens food — a prime necessity of life — is not to be judged by a different standard.

Finally, we have to consider the policy of bounties in its bearing on the fact that, considering their efficiency,[1] too large a percentage of the people of the United States are engaged in

[1] "An ordinary farm hand in the United States raises as much grain as three in England, four in France, five in Germany or six in Austria." — See Mulhall, *North American Review*, vol. clx, 1895, p. 643.

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the production of food. Bounties upon agricultural exports would simply be an inducement to men to engage in an industry that is already overdone. Nearly forty per cent of those ten years of age and over employed in various occupations in the United States are engaged in farming pursuits,[1] while in the highest development of agriculture twenty to twenty-five per cent at most could furnish food for all.[2]

At the present time the rapid increase of city populations, the development of manufacturing industries and the larger expenditure of energy in the production of such articles as eggs, butter, small fruits, *etc.*, are tending to reduce the plethora of those engaged in the production of the staple products of the farm, and to bring about a more healthy balance of industries. It is difficult to realize the rapidity with which the people of the United States are passing industrially from agriculture to manufacturing. Between 1850 and 1890 the capital invested in manufactures increased from $533,000,000 to $6,180,000,000, and the wages annually paid from $237,000,000 to $2,000,000,000. The manufactures of the United States "exceed those of the mother country in the proportion of seven to four, and are increasing at a rate which, if maintained for a quarter of a century, will make the United States as important a source of supply for manufactured articles as it now is of agricultural products."[3] The United States is going into the business of manufacturing for export at a rate which is causing grave apprehensions to English and other European manufacturers, and "will probably in the near future dominate all the markets of the world in the production of manufactured goods."[4] American steel, dry goods, paper and carpets are successfully competing in the markets of the world, even in those of England herself. Only recently a press dispatch announced the shipment of a cargo of twenty locomotives on a single vessel to Russia.

All this is indicative of the direction in which the highest

[1] Abstract of Eleventh Census, p. 78.

[2] Report of Department of Agriculture, 1885, p. 392.

[3] Gannett, Building of a Nation, p. 176.

[4] T. A. Eddy and Carl Schurz, *Engineering Magazine*, vol. ix, 1895, p. 413.

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economic interests of the nation lie. However much relief legislative remedies may afford the farmer, his prosperity is largely dependent upon such a spontaneous redistribution of the working energy of the people as will secure the wisest adjustment of economic force. A fiscal policy like the export bounty, which would counteract this tendency, would strike at a process from the further progress of which the farmer has much to gain, and would prevent the most effective application of the wealth-producing power of the nation.

To summarize: In considering the proposal to establish a system of bounties upon exports of agricultural staples, we have found that Mr. Lubin's argument in its behalf is without logical foundation; that such a system probably would not permanently maintain the prices of agricultural staples at a higher level; that under our form of popular government this policy could not be carried out with any steadfastness of purpose; that it is contrary to the financial interests of the treasury; that it is opposed to economic and social progress; and that it is hostile to the most economic expenditure of the wealth-producing energy of the nation.

4. *The importance of thrift as a remedy for agricultural depression.*—Those whose knowledge of the subject is a product of imagination rather than of actual experience are prone to dwell upon the attractiveness of farm life. The pleasures of agriculture have long been a favorite topic with poets; and even hard-headed business men are frequently convinced, by the familiar pictures of nature's coöperation with the farmer — of the growth of his crops and livestock in value while he is asleep — that the life of the farmer is one of comparative ease. In marked contrast with such an impression are the stern realities: nature frequently defeats the efforts of the farmer, and his life is spent in persistent physical toil. In this routine the women of his household coöperate. They begin with the early dawn a busy round of toil that scarcely ends with darkness. On many farms they not only cook, wash, bake and care for the house, but also supply the table with vegetables,

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milk, butter, eggs and poultry, besides paying for the necessary groceries of the family and for their own clothing out of the products of the garden, dairy and hennery, which they care for with their own hands. Probably among no class of equal social standing do the women so generally work as hard or contribute as much to economic success.[1]

The conditions of success upon the farm are probably as well supplied as anywhere among those religious sects known as Dunkards and Mennonites, and nowhere else are the evidences of agricultural prosperity more apparent. But among the mass of our country people, as President Jordan has observed, "a notion has been spreading . . . that the dwellers in towns do 'not have to work to make a living, or do not have to work hard'; and the farmer is coming to think that 'the day of hard labor has passed, or ought to pass.'"[2] The economic future of all who act on this principle is without hope.

It is not enough, however, for the farmer to work hard: he must also exercise good business judgment. The farmer, at the present time much more than formerly, sells what he produces and buys what he consumes. His business relationships have greatly enlarged, and it follows that a knowledge of business methods counts more in his favor. A man may be highly industrious and yet, owing to a deficiency in business tact, may fail in the struggle of life.

Success in farming depends, finally, upon supplementing hard work and sound judgment with frugal living. The farmer who would woo prosperity with any hope of winning her must live within his means. It is impossible to state in general

[1] This is, of course, due to the fact that on the farm there is a very great opportunity for women to lend a helping hand — an opportunity which the state has in no wise curtailed, and is not likely to curtail, by legislation. The above remarks are likewise applicable to the boys and girls who grow to manhood and womanhood in the country. From this statement follow two corollaries: (1) children of farmers are more likely to be trained to habits of industry than those of other classes; (2) the burden of rearing a family is less for the farmer than for those in many other pursuits. The latter fact, in connection with the economic importance of the wife in rural affairs, tends to cause earlier marriages and a larger birthrate among the rural than among the urban population.

[2] *The Forum*, vol. xii, 1891–92, p. 241.

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terms a rule of justifiable expenditure : this is a matter each must determine for himself. Some who are struggling to pay for a farm find it necessary to limit their expenses to the simplest necessaries of life. As Booker T. Washington has said : "Art and music for people who live in rented houses and have no bank account are not the most important subjects to which attention can be given. Such education creates wants without a corresponding ability to supply these increased wants."[1] Social philosophers will probably criticise the standard of living involved in this view. It is not necessary, however, for all farmers to be equally saving. Some have ample means for books, magazines, music, travel, the higher education of their children, modern and well-furnished houses and commodious barns. Some who could well afford these things are lacking in taste for them, while others have found the struggle of life so severe that they have never cultivated the habit of spending money sufficiently to find it a pleasure. In general, however, even those farmers who are fairly well-to-do find it necessary to refrain from anything approaching luxury or ostentation.

The suggestion that the solution for the farmer's economic difficulties depends upon limiting expenditure to income meets with various objections. It is argued, for example, that were the doctrine of saving herein enjoined to be generally carried out, industrial paralysis would follow because of the meagreness of consumption. In reply to this, it is to be observed that *thrift* and not *parsimony* is the quality commended. The former inculcates saving in the present, with reference to spending in the future ; some material comfort is sacrificed now, but only for the purpose of having it with greater certainty in time to come. The latter plans to avoid expenditure everywhere and always. Thrift is not content with securing "unto the end a meagre subsistence without improvement of conditions of life and surroundings";[2] parsimony is content with this. Thrift is, therefore, economically sound, while parsimony is not. Looked at in its true light, the

[1] *Religious Telescope*, Dayton, Ohio, August 19, 1896, p. 535.
[2] *Public Opinion*, August 27, 1896, p. 272.

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doctrine of saving is complementary to that of spending. The latter is conditioned by the former and *vice versa*. But under the conditions of American life, society need give itself no concern lest the disposition to spend should fail to keep pace with the ability to do so. We may at least be assured that no man of sense, who is struggling to win economic independence on the farm, will spend in order to make times good. Prosperity based upon extravagance cannot be permanent.

It may be urged, again, that farmers should live as well as the members of any other social class; and that, if they are to adjust expenditures to incomes, they will not be able to share in the good things of life to the same degree as the members of some other classes in society. In this observation there is much force; and it may be remarked in passing that the writer yields to no one in his desire that farmers should have as many of the material comforts of life as the members of any other class. But the incontestable fact is that they cannot; nor is this peculiar to the occupation of the farmer. The standard of comfort enjoyed by those who live in towns and cities also varies widely. How far the present system of distribution falls short of giving each his due, it is impossible to say. It is probable, however, that any system that did not recognize differences in skill, executive talent, *etc.*, as a basis upon which to assign to some more and to others less, not only would be doomed to failure, but would so curtail production as to be highly injurious from a social point of view.[1] In other words, differences in the standard of comfort must be accepted as permanent facts in social arrangements.

Something more than criticism of the present order of things is necessary for the American farmer. He stands confronted with certain conditions which are, for the most part, unalterable. What, then, is he to do? There is but one reply. Face the conditions as they are, and pay for success the price which they require. At the present time, side by side with those who fail are others who, by their industry, sound judgment and frugality, are going on to a competency. These are the qualities

[1] Graham, Socialism New and Old, pp. 200–204.

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through which tenants are rising to the ownership of the farms which they occupy, while owners are in turn descending to the station of tenants.[1] In the present industrial struggle the fittest are destined to survive, and the test of fitness for each individual lies in the adjustment of expenditure to income. This has ever been the method by which the American farmer has achieved success, even during times of the greatest agricultural prosperity, and especially during every period of low prices for the products of the farm. The conclusion is not hastily drawn, therefore, that those qualities which are best summed up in the word *thrift*, and which have served the farmers of the United States so well in the past, are their main reliance during the present period of agricultural depression.

VI. Conclusion.

For the purpose of continuing the consideration of the farmer's economic condition, it is intended, in this concluding part, to make a comparative study of prices, of wages of farm labor, of taxes, of rural wealth, of standards of living in agricultural communities and of the farmer's situation in contrast with his fellows.

1. *Prices.* — In addition to the light thrown upon this subject in the preceding pages, it is important to hold in mind the following considerations.

The farmer's interest does not lie exclusively in receiving remunerative prices for the commodities he may have to sell. His well-being is quite as much dependent upon the prices he in turn must pay for articles which either enter into the personal consumption of himself and family or are used in the process of production. A comparative study of the fluctuations in the prices of agricultural products and of commodities

[1] "If German, Polish, Bohemian and Swedish agriculturists were to invade the South in large numbers, they would dispossess the plantation owners by their industry and economy. They were born to work and to save. Already the process has begun in Texas, where large plantations are passing piecemeal into the hands of these people, and where in a few years the purchasers are entirely out of debt." — G. K. Holmes, *Annals of the American Academy of Political and Social Science*, vol. iv, 1893–94, p. 73.

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in general between 1840 and 1891 reveals several important facts :

First, there have been three periods during which the average of agricultural prices has ruled lower than that of general prices : 1840–53, 1876–80, 1883–90. During the intervening periods agricultural prices ranged relatively high. From 1840 to 1853 the general average of agricultural prices ranged lower than at any other time in fifty-two years. In Ohio three-year-old ox teams, well matched and well broken, sold in 1842–46 for $24 to $30 ; in 1850, nice lambs weighing forty pounds sold for 56 cents per head, four-year-old steers for $15, dressed pork at $1.50 per cwt., cheese at 4 to 4½ cents per pound,[1] wheat at 25 to 30 cents and oats at 10 to 15 cents per bushel.[2]

Second, with the exception of 1860–65, a sympathetic relationship is found to exist between general and agricultural prices. As a rule, when the farmer received low prices for his produce, he paid low prices in turn for the articles he bought. This is well illustrated by the tendency of prices of farm machinery to move downward in company with the price of farm produce. Thus, it has been shown that the number of bushels of wheat, corn or oats required to pay for a list of ordinary farm implements, including a binder, a mower, a two-horse cultivator and a wagon, was less in 1889 than in 1873.[3] The report of the Pennsylvania Bureau of Industrial Statistics for 1890 shows that in Chester County the average decline of wheat from 1880–81 to 1889–90 was 29.1 per cent, of corn 16.9 per cent, of oats 15.4 per cent. "During the same time the decline in the more costly farm machinery . . . was 33.9 per cent, in the lesser farm implements, such as shovels, rakes, hoes, scythes and pitchforks, 26 per cent, and the average rate of decline in ten selected articles of staple use, such as sugars, tea, coffee, salt, and standard cottons, calicoes, ginghams and coarse boots, was 15.3 per cent." [4]

[1] Ohio Agricultural Report, 1890, p. 397. [2] *Ibid.*, 1892, p. 528.
[3] Prof. E. W. Bemis, *Journal of Political Economy*, vol. i, 1892–93, p. 208.
[4] *Ibid.*, p. 209.

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Third, the economic condition of any particular farmer depends largely upon the kinds of commodities he produces, and upon the proportions in which he puts them upon the market. For example, in the seven years ending with 1891, the average price of wheat was 24 per cent lower than in 1860, that of corn 25 per cent, that of hogs for live weight 22 per cent; while during the same period tobacco averaged 20 per cent higher than in 1860, mutton sheep 29 per cent and fat cattle 28 per cent.[1]

Likewise, the farmer's condition depends very greatly upon what articles he buys, and in what ratio various commodities enter into the budget of his expenditure. Thus, during the seven years ending with 1891, cloths and clothing were 16 per cent lower than in 1860, metals and implements 24 per cent and house-furnishing goods 30 per cent. The conditions have therefore been favorable for those families with a liking for good clothes and for a house furnished in an attractive manner. On the other hand, the farmer who built a new house or barn in 1891 had to pay 24 per cent more for lumber and building materials than in 1860.[2]

No comparative study of farm prices, however, should fail to take account of the low price level for farm products which has prevailed since 1891.[3] The effect of this upon the burden of mortgage indebtedness has already been pointed out.[4] But the farmer has also suffered in consequence as a consumer. Owing to his inability to reduce adequately the cost of production, the simultaneous decline in prices of commodities which he buys has afforded him no compensation commensurate with the fall in the prices of his own products.

2. *Farm wages.* — In regard to the cost of labor, the farmer has been placed at a disadvantage by the recent fall in prices. Wages of hired labor have declined somewhat during recent years, but not to such an extent as adequately to offset the

[1] Aldrich Report, part i, pp. 99, 102–108.

[2] *Ibid.*

[3] See Part IV of this essay, POLITICAL SCIENCE QUARTERLY, December, 1896, p. 606.

[4] *Ibid.*, p. 607.

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downward movement in the price of farm commodities. To-day wages of farm labor are almost double what they were fifty years ago.[1] This increase in the cost of labor, together with the uncertainty about securing any help at all during critical periods, such as harvest time, has doubtless hastened the introduction of labor-saving machines upon the farm as a matter of economy, convenience and necessity. Specialization in farming has also quickened the introduction of agricultural machinery. This is illustrated in the development of wheat production in the Northwest, which could not have taken place on such a grand scale without the aid of the binder.[2] But to whatever extent machines may have been substituted for manual labor, there has been since 1891 no reduction in their cost sufficient to lessen materially the farmer's outlay in production. Nor was the fall in prices of farm products beginning with 1892 due in any marked degree to the introduction of machinery prior to that date. Successive improvements in a machine and reductions in its price always precede its general use; and these features were not especially characteristic of the several years preceding 1892. There was, however, a noticeable increase in the export value of agricultural implements during these years,[3] and of this increase harvesting machinery contributed an important item[4] — a fact probably related to the enlarged wheat production of Russia and Argentina in recent years.

[1] Wages of Farm Labor in the United States, Division of Statistics, Miscellaneous Reports, No. 4, 1892, pp. 13–15 and 54–69. Prof. James H. Hyslop makes the interesting suggestion that one cause of high wages for farm labor is the liberality with which outdoor relief is given to the poor. "The pauper feels secure in his expectation of care from the county, and will not work for reduced wages. He demands terms that are above what poor-law relief gives him; and he might naturally be expected to do this, since the law will give him a living without any work at all, and hence if he works he can well expect additional wages." Professor Hyslop suggests as a remedy "an alteration of the law so that every form of public relief shall be refused outside the almshouse, and given there only in return for work done." — *The Independent*, October 15, 1896.

[2] From another point of view inventions have promoted specialization. Thus, the tobacco planter rendered possible the planting of a larger acreage, and led communities accustomed to the industry to expend more productive energy in the growth of tobacco.

[3] Statistical Abstract of United States, 1895, p. 168.

[4] *Ibid.*

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3. *Farm taxes.* — The relation of the farmer to taxation has already been considered.[1] It is merely desired to remark here that taxes are a fixed charge which have tended to increase, while the prices of farm produce have been on the decline.

4. *Rural wealth.* — During the forty years ending with 1890, rural wealth increased fourfold. Even during the decade 1880–90, notwithstanding the marked depreciation of farm lands in certain states, there was for the country at large a substantial advance in the sum total of rural wealth. The source of this increase, however, has not been confined to the ordinary profits of the farmer's business. Part of it is to be credited to soil exploitation, and part to the "unearned increment" incidental to the growth of land values. An increase within a generation of more than $25 per acre in the value of farm lands in many states roughly measures the influence of the latter factor; that of the former is indicated by the cost of purchased fertility. It has been demonstrated that, though "the wheat crops of Ohio have been slightly increased by the use of commercial fertilizers, . . . the average cost of this increase has equaled its market value."[2] These conditions have unquestionably attracted energy from other pursuits into the business of food production, with the effect of depressing agricultural profits proper below their natural level.

5. *Standard of living.* — The present condition of the American farmer in respect to his standard of living is vastly superior

[1] See Part V, Section 2, of this essay, POLITICAL SCIENCE QUARTERLY, December, 1896, pp. 632–639. One item which unduly swells the sum total required for taxes and of which farmers complain is the salary account of county officials. The complaint is that the pay of this body of men has in many cases never been reduced from the point which it reached in the period of inflation during and following the Civil War. Furthermore, a system of fees which yielded the recipient a moderate income at the time they were fixed has frequently resulted, with growth of population, in pay out of proportion to services rendered, and has become a corruption fund which candidates are compelled to hand over to party managers as a price for office. That the cases are numerous in which a reduction of salaries and fees would not lessen the efficiency with which the public is served admits of but little doubt. Legislation having this in view, however, usually encounters the combined opposition of the office-holding class in both parties — an opposition that is generally successful.

[2] Chas. E. Thorne, *Science*, vol. xix, 1892, p. 49.

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to that of forty to fifty years ago. In contrasting the two, J. R. Dodge says :

> The farmer of those days dressed in homespun, or in the coarse and dear fabrics of the few rough looms so recently started in the new factories. His furniture was generally of the plainest, meagre in variety, the clumsy workmanship of the local cabinet maker, or the result of his own unskilled labor. . . . The clothing now used by the farmer's wife and children could not then have been obtained at any cost. Present social and educational facilities required by farmers, the furnishing and adornment of their homes, the equipment in horses and carriages and other comforts of life, such as are now common to the best class of farmers, were scarcely dreamed of in 1840. . . . Throughout the Ohio Valley, the farms . . . are now . . . improved with commodious and substantial buildings, furnished with convenient and often elegant furniture, carpets, sewing machines, libraries and musical instruments. There are indeed poorer establishments, occupied by younger or less enterprising farmers, but improvement has been general if not universal.[1]

Again, "farm machinery now gives the farmer an amount of leisure unknown in the old days of hand labor,"[2] relieves his mind of much of the anxiety and turmoil of securing hired help, and lightens his work by abolishing many of its more laborious processes.

6. *The farmer in contrast with his fellows.* — Let us now compare the farmer's well-being with that of his fellows in other walks of life. In addition to the economic and social forces favoring the accumulation of urban rather than rural wealth that were considered in Part II of this essay, certain further disadvantages of the farmer deserve attention.

First, the discriminations practiced by railway corporations between persons, places and commodities have more seriously injured the farmer than any other class. Competition between carriers at trade centers has frequently depressed rates ruinously low. At intermediate points, however, the railway is thoroughly monopolistic in character. Railway patrons at such places, having no alternative, have frequently been compelled

[1] *The American Agriculturist*, vol. li, 1892, pp. 3, 4.
[2] E. V. Smalley, *The Forum*, vol. xvii, 1894, p. 248.

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to pay monopoly charges for the service. Consequently, the chiefly agricultural regions have always been singled out by railway managers for recouping the losses sustained by perilous competition at large centers. Delivering his grain for the most part, not at the great trade centers, but at the smaller way stations, the farmer has been made to feel the oppressive power of railway favoritism. Scattered over the broad area of the United States, railway discrimination has in many instances not only lessened the price of what he sells, but has increased the cost of what he buys. Moreover, the farmer's investment being largely in an immovable species of property (land), he has not been able to transfer the field of his operations to the great cities, as producers in many other industries have done in order to profit by lower railway rates.[1]

Again, the farmer is at a disadvantage in the fact that "he deals altogether with a raw material."[2] In explanation of this statement, President James H. Canfield writes:

> It seems to me that as civilization advances, and as invention and ingenuity carry the final product, in a certain sense, further from the initial point at which the work of transmutation is taken up, the greater part of the returns will go to reward the ingenuity and intelligence of the latter processes; and a much less proportionate part will be returned to the one who practically handles the raw material. I cannot believe that the man who mines iron and coal will ever be as well paid as the man who makes watch springs. Perhaps a better illustration would be that the men who construct the different portions of a fine carriage and assemble these into one finished product will always be better paid than the men who cut the timber and hauled it to mill.[3]

The farmer is at a further disadvantage in that the products of his labor are especially subject to instability of price. This is due to the fact that he is largely engaged in the production

[1] Prof. H. C. Adams, *The Century*, vol. xxi, 1891–92, p. 780.

[2] Pres. James H. Canfield, *The Forum*, vol. xviii, 1894–95, p. 456.

[3] Personal letter, June 19, 1896. Here lies one of the difficulties with which agricultural colleges have had to contend: "For a given amount of time spent in study, and of pecuniary sacrifice made for the sake of the study, more money can usually be gained in the years immediately succeeding graduation by the students of other branches than agriculture." — *The Nation*, vol. xxx, 1880, p. 133.

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of commodities which have in general no utility save in satisfying the demand for food; and for such products the demand is relatively inelastic. Hence a sudden increase or decrease in the supply of farm products causes a relatively great fluctuation in price.

As an offset to the disadvantages under which the farmer labors as compared with those who are engaged in urban industries, there are certain particulars in which his condition is better than theirs. In the first place, he has more generally succeeded in securing for himself a home and a small capital than the men of other industrial classes. Of farm proprietors under twenty-five years of age, thirty-two per cent are owners, and the percentage increases with age up to eighty-three per cent for owners of sixty years of age and over. Of home proprietors less than twenty-five years of age, only thirteen per cent own their homes, and the percentage increases without interruption to fifty-seven per cent for owners of sixty years of age and over. Of all farm families sixty-five per cent own their homes, while but thirty-six per cent of the homes in towns and cities are owned by the occupants.[1] It is true that the opportunities to acquire a vast fortune are greater in the cities than in the country, but it should not be overlooked that these opportunities are relatively few, and that rural wealth is not marked by that inequality of distribution so characteristic of urban wealth. Notwithstanding the more rapid increase of the latter, it is probable that on an average the farmer of the United States ends his days in a better financial condition than he would have attained had he begun his industrial career in the city rather than in the country.

Home ownership, however, is not always a trustworthy criterion of the relative well-being of classes. There is in the cities a considerable class who do not generally own their homes, but who are far above the farmers in material prosperity. It is not, however, with this class that the farmers are naturally compared, but with that great majority who work for wages or for small salaries. Here again the test of home

[1] Eleventh Census, volume on Farms and Homes, p. 227.

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ownership is illusory, for, owing to the uncertainty of tenure in employment among the wage-earning class, the inducement to home ownership is far weaker than among farmers. But in this very fact appears the more desirable position of the latter; since they have — what the wages class lacks — a controlling voice in determining the conditions under which they labor.[1]

Again, the farmer is less disastrously affected than others by panics and commercial depressions. Three reasons may be assigned in explanation of this. In the first place, the products of the farm are largely articles of absolute necessity. However much the masses of the people, in times of economic pressure, may dispense with the comforts of life, the demand for food remains relatively constant. Consequently, during times of economic disturbance, the prices which farm products command are less unfavorably affected than those of many other classes of commodities.[2] In the second place, in the words of a high authority,

> farmers deal on a cash basis to a larger extent than most producers. The main trouble in panic times is that those who have relied largely upon credit find their credit withdrawn or largely curtailed. Naturally such a state of things does not affect so seriously the class that, more than any other, is accustomed to pay and receive cash.[3]

Finally, the farmer sells less of what he produces and buys less of what he consumes than many other classes in industrial society. No part of the services of the laborer, for example, is capable of ministering to his material well-being till sold, and the commodities that are adapted to his wants are bought in

[1] The farmer, it is true, is to some extent a capitalist — to some extent, also, by coördinating capital and labor, he acts as entrepreneur. But the farmer is by distinction a laboring man. In a large number of cases he employs little or no help, but does all or nearly all the work with his own hands. Moreover, the successful employer of labor on the farm generally eats at the same table and works alongside of his hired help. There is not in rural economy that sharp differentiation into capitalists, employers and workers which is so prominent a feature of the modern industrial system. While, therefore, the farmer differs from the industrial employee by being to some extent a capitalist and an entrepreneur, he is preeminently a laboring man who employs himself.

[2] Walker, Money, Trade and Industry, pp. 126–133.

[3] Personal letter from the New York *Journal of Commerce*, November 4, 1895.

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exchange. The farmer is also less under the necessity of realizing immediately on his labor than is the worker in cities. The efforts of the former crystallize to a large extent into non-perishable products, while the services of the latter must be sold day by day or be lost forever. The well-being of the farmer is thus not so dependent upon general economic conditions, and he therefore feels less keenly the disturbance which a panic or commercial depression creates in industrial society.

The economic basis for the existing discontent among the agricultural classes may now be summarized as follows :

1. Cheapened transportation has deprived a number of states of their natural advantage of location, and has forced them into competition with the constantly increasing volume of food products not only of the great West, but of remoter sections of the world, thereby seriously diminishing the income-yielding power and value of their farm lands. Complementary to this are the unremunerative prices received by those farmers whom distance from the consumer places beyond the margin of profitable cultivation — that is, by those located so far from the seat of consumption as not to have sufficient compensation for their toil after the cost of transporting their products to market has been met. Consequently, as occasionally happens in the case of California fruits, crops are sometimes a source of loss to the grower, partly because of their distance from market, as well as because of their unusual size or perishable nature.

2. The industry of the farmer, especially in some of the western states, has in many cases been overcome by crop disasters, and those ambitious to acquire homes have been defeated by unfavorable weather.

3. The sharp and unexpected fall in prices of many farm staples since 1891, which it has been impossible to meet by lowering the cost of production, have inflicted serious losses upon the producer.

4. These conditions have made more difficult the payment of interest charges and mortgage debts, have increased the relative number of mortgage foreclosures, have prolonged the

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period required for tenants to rise to land ownership, have caused the expense for hired labor to be a greater drain upon the resources of the farm, have made the inequitable burden imposed upon the farmer by the general property tax more difficult to carry, have increased the strain of maintaining a higher standard of living and have rendered less endurable the tyranny of railway discriminations and the exactions of trusts. Furthermore, since the great mass of farmers, after starting in life with no other resources than an abundance of energy and a willingness to work, have attained only very modest incomes, any losses to which they have been subjected have been more keenly felt than if they had been possessed of more abundant means.

Our study has thus far been occupied with the economic basis of the farmer's discontent. A satisfactory result, however, requires an appreciation of the far more subtle influences that produce the general condition of restlessness in nineteenth century society. On final analysis much of the social unrest of the age springs from a longing in the human breast for development, from dissatisfaction with any condition or station in life, however comfortable or luxurious, that offers no chance to rise, no opportunity to progress. "Man is by nature a discontented animal. Satisfy one of his desires and forthwith he feels the sting of another." [1] In short, the ideal of a progressive society, which so thoroughly possesses the Western mind, is in no small degree responsible for social discontent. This ideal has been strengthened by the enormous strides society has taken, within the memory of men now living, through the modern development of transportation and communication.

The civilizations of the Orient, which rest satisfied with the institutions handed down by tradition, whose ideal is that of a static social condition equally good for all time, do not have social agitations.[2] The difference between the static civilizations of the Orient and the dynamic society of the Occident is,

[1] Alfred H. Peters, *Public Opinion*, vol. xvi, 1894, p. 480.
[2] Gunton, Social Economics, part i, chs. iii, iv, *passim*.

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it is true, the difference between social contentment and social unrest; but in the former the masses are content with a degraded state of equality, while in the latter unrest is the mainspring of their progress. Professor Gunton has said:

> If the English in India could make the Hindoo laborer want more things, they could soon civilize him up to their own standard. If the Russian peasants were not content with so little, the development of Russia might run on at equal speed with that of the United States. If our Indians could only be made to want houses and steam machinery and good clothes enough to work for them, the Indian problem would solve itself in a single decade.[1]

The contented state of the Oriental mind is what renders any amelioration of Eastern civilizations such a hopeless task.

> The Hindoo having, as he generally has, sufficient for the day, is happy, content to sleep, and is hardly to be urged to greater work by the offer of greater earnings. "I have enough; why should I work for more?" is not an unusual answer, and the offer of a higher place is often refused lest it should involve more effort.[2]

If progress is better than stagnation, so is Western unrest better than Eastern contentment.

The idea of a progressive society is reënforced by other forces productive of discontent. Among these is the belief in the unequal distribution of wealth. It is said that 4047 millionaires of the United States own twenty per cent of the wealth; that nine per cent of the families, including the millionaires, own seventy-one per cent; and that "as little as five per cent of the nation's wealth is owned by fifty-two per cent of the families."[3] Few contemplate with entire satisfaction such statements as these, and, whatever may be their import, they create a feeling of uneasiness among the masses of the people. The spirit of modern times is prone to inquire whether society has a sufficient guarantee that the concentrated ownership of the nation's wealth will be used in such

[1] Social Economics, p. 440.
[2] *Fortnightly Review*, vol. lx, Old Series, 1893, p. 209.
[3] G. K. Holmes, POLITICAL SCIENCE QUARTERLY, vol. viii, 1893, p. 593.

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a way as to minister to the well-being of the people; and the frequency with which the interests of the public are disregarded by trusts and corporations keeps alive the fires of the social discontent.

This attitude of mind is doubtless somewhat tinged with the "complaint that every man who is compelled to walk has against the man who rides, . . . the complaint of him who has nothing against him who has something and of him who has something against him who has more."[1] Moreover, "it is no difficult thing to make the world believe it has been misused;"[2] and there is consequently a great deal of unrest inspired by a feeling of social injustice that either has no foundation or rests upon a misinterpretation of events. The willful distortion of facts and the diffusion of misinformation among the people by newspapers intent only on partisan ends, and by politicians who value their reputations for veracity less than they do their loyalty to party and their claims to office, are in large part responsible for this. But propositions which rest upon falsehood are none the less potent in arousing the indignation of those who believe them than are those which rest upon truth.

The spirit of democracy also lies at the basis of much of the unrest of our age. By democracy is here meant "the natural wish of a people to have a hand, if need be a controlling hand, in the management of their own affairs";[3] an attitude of the public mind which makes "itself generally disagreeable by asking the Powers that Be at the most inconvenient moment whether they are the powers that ought to be."[4] "Formerly the immense majority of men — our brothers — knew only their sufferings, their wants and their desires. They are beginning now to know their opportunity and their power."[5] A people looking upon itself as the source of authority, conscious of its power and confident in its own wisdom, is a fertile soil for the seed of social uneasiness to grow in. Such a spirit is especially characteristic of the United States, where territorial

[1] Judge P. S. Grosscup, Chicago *Tribune*, October 31, 1896.
[2] *Ibid.*
[3] James Russell Lowell, Democracy and Other Addresses, p. 16.
[4] *Ibid.*, p. 20. [5] *Ibid.*, p. 13.

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expansion and marvelous social and material development have favored the feeling of national self-sufficiency. "Men are even more eager than in Europe to hasten to the ends they desire, even more impatient of the delays which a reliance on natural forces involves, even more sensitive to the wretchedness of their fellows and to the mischiefs which vice and ignorance breed."[1]

A fundamental change in the attitude of men's minds towards life is another primary fact in the restlessness of modern times. For centuries a spirit of *other*-worldliness gave character to all mental activity, and controlled the conduct of society.

> Humanity . . . passed . . . intent on the terrors of sin, death and judgment, along the highways of the world, and scarcely knew that they were sightworthy, or that life is a blessing. Beauty is a snare, pleasure a sin, the world a fleeting show, man fallen and lost, death the only certainty, . . . abstinence and mortification the only safe rules of life.[2]

To men living in the gloomy presence of such thoughts, the conditions of life here were of little importance. "For the poor there was no physician; for the dying, the monk and his crucifix. The aim was to smooth the sufferer's passage to the next world, not to save him for this."[3] In marked contrast is the attitude of the thinker of to-day. How to render existence in this world more tolerable, how to realize an ideal social state, is the aim of the modern reformer. "The general appearance of comfort and well-being almost everywhere . . . indicates a disposition to live for the present rather than to sacrifice the present to the future."[4] The masses are seized with a passion for the enjoyment of the material comforts of life, and it no longer suffices simply to commend to them the virtues of patience and forbearance. This revolution in the thinking and conduct of men has undoubtedly contributed greatly to the disquietude of the age.

[1] Bryce, The American Commonwealth (ed. of 1888), vol. ii, p. 409.
[2] Pearson, The Renaissance in Italy, pp. 5, 6.
[3] Draper, The Intellectual Development of Europe, vol. ii, p. 231.
[4] G. K. Holmes, POLITICAL SCIENCE QUARTERLY, vol. viii, 1893, p. 598.

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Hand in hand with the growth of democracy and a spirit of *this*-worldliness, the rationalistic tendencies of mankind have become stronger. The spirit of inquiry is being scrupulously applied to every phase of life. "Truth for authority and not authority for truth," is the spirit of the age. The tendency is to discard that which will not stand the test of reason, and with the growing intelligence of man this tendency has become more and more marked. Obviously, a society permeated with this spirit is destined to be in a continual state of ferment.

Nor should the important rôle played by modern means of communication be overlooked. Never before were all the various facilities for interchange of thought so efficient and abundant. But for this fact the democratic and rationalistic spirits and all the factors productive of discontent would be largely stripped of their power. No one who has an idea to express need lack a vehicle in which to convey it to the world. Every phase and condition of life is reflected daily in the press. Much of modern discontent is due to a desire for improvement, and without a knowledge of present conditions this desire can have no intelligent basis. The explanation of much of the unrest of the age, therefore, is not that social conditions are inferior to what they formerly were, but that the public, through the medium of the telephone, the telegraph and the printing press, is made acquainted with the terms of existence which everywhere obtain.

As to American life in particular, the unrest so characteristic of it is in part due to the very wholesomeness of social and economic conditions. Probably in no other country is society in so much of a flux, or the mobility of the individual units so marked. There is a constant movement going on from below upward and from above downward. Each man, no matter into how humble a condition born, has a chance, and knows he has a chance, of rising; and where he will be found later on in life cannot be predicted from the status of his birth. These conditions, however, give rise to hopes, involve the possibility of disappointment and, therefore, contain within themselves the germs of discontent.

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Moreover, the energies of the nation have been absorbed for more than a generation in industrial expansion. Material development has been so sudden, the industrial activities and relationships of men have so greatly enlarged, that problems of an economic character have arisen more rapidly than they have been solved. The process of redefining the rights of individuals in their new relationships, of adjusting the legal framework of society to corporations, trusts and all the complex phenomena of modern life, is necessarily slow. Meanwhile, the issues which in times past occupied the public mind have disappeared. Political and religious freedom have been largely attained. The question of slavery was settled a generation ago by an appeal to arms. Men's minds are left free to deal with problems of social and economic import. At the same time the rapid increase of population and a rising standard of living intensify the competitive struggle of life; and whatever influence the public domain may have exercised in lessening the intensity of this struggle is now largely a matter of the past.

The farmer's discontent is in part a manifestation of these general conditions so prevalent in the nineteenth century in all Western civilizations. The wants of the rural population, in common with those of nearly all classes of society, have developed more rapidly than the means of satisfying them. The social requirements and customs of the times demand a larger outlay for dress, amusement, jewelry, travel, education and even funeral expenses.[1] Owing to the great variety which such classes of wants assume when they are once indulged, the higher standard of living in agricultural communities, far from contributing to contentment of mind, has probably had just the opposite effect.[2] And the more luxurious style of life found in cities, especially the ostentatious display of those who have risen suddenly to wealth, makes the farmer feel that he is getting less than his share of the good things of life. As Professor Giddings says:

[1] Clarence Deming, *Yale Review*, vol. i, 1892-93, p. 297.
[2] *The Nation*, vol. xlvi, 1888, p. 502.

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The isolated farmer and his family have begun to be affected by the strain of modern life in a deplorable way. They are no longer ignorant of the luxuries of the towns and a simple manner of life no longer satisfies them. The house must be remodeled and refurnished; the table must be varied; clothing must be in style; and the horses, carriages and harnesses must be costly. The impossibility of maintaining this scale of expense under existing agricultural conditions embitters life, and finally, in many cases, destroys the mental balance.[1]

In addition to economic grievances and the disturbing influence of general social development, the nature of the farmer's occupation is such as to contribute to a discontented frame of mind. However much intelligence or skill he may bring to his work, results after all depend largely upon nature. Not infrequently, when every possible precaution has been taken, his hopes are suddenly blasted by an unpropitious change in the weather. It is true that the adverse influence of unfavorable weather is likely to be exaggerated at the time, but it is none the less depressing in its psychological effect. The excessive rainfall or the unwelcome drought of summer, the cutting winds of a rigorous winter, the late frosts of spring or the early frosts of autumn — these are the product of natural forces with which the farmer is largely powerless to cope. In the presence of such phenomena, the most hopeful minds are apt to become depressed and to give expression to feelings of discontent.

In conclusion it is necessary to notice certain facts that have contributed to the special development of discontent among American farmers in recent years:

1. The period during and immediately following the Civil War was one of very great prosperity to the farmer. In the fifty-six years since 1840, there has been no other time when the farmer so easily paid his debts, when his labors relative to those in other occupations were so liberally rewarded. Though this prosperity was too great to last, the memory of it still abides; and there are those in most farm communities who measure the

[1] Principles of Sociology, p. 349.

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condition of the agriculturist at present by that of what may be termed the golden age of American agriculture. Without doubt the recollections of that halcyon period contribute to the dissatisfied frame of mind of the American farmer at the present time.

That prosperity was due in large part to the withdrawal of productive energy from agricultural pursuits by the necessities of war, and to the waste and destruction of food supplies occasioned by military operations. In part, also, it was due to successive inflations of the currency, which gave the farmer an artificial leverage in the payment of mortgage debt, and imparted an upward movement to the value of farm lands: the temporary advantage thus secured has much to do with the groundless belief at the present time in the potency of an irredeemable currency to ensure permanent agricultural prosperity. It is true, of course, that, as a consumer of commodities produced by others, the farmer reaped no ultimate advantage from the large prices which the war and a depreciated currency enabled him to get for his produce. But many fail to make allowance for this; and thus the disparity between present prices and those that formerly prevailed is rendered greater, and dissatisfaction is still further intensified.

2. During the thirty years from 1860 to 1890 occurred the construction of the greater part of the vast systems of railway throughout the West, the opening up of new lands for settlement and a tremendous movement of migration to the Western states. Since 1860, 2,520,564 farms have been created, and 217,006,091 acres thereby brought under cultivation.[1] The throng of settlers who participated in this wholesale process of making homes possessed on the average at the beginning a meagre allowance of capital, but they represented the very flower of the nation in enthusiasm, hopefulness and energy.

It is the most enterprising and unsettled Americans that come West; and when they have left their old homes, broken their old ties, resigned the comforts and pleasures of their former homes, they are

[1] Tenth Census, Statistics of Agriculture, p. 25, in connection with Eleventh Census, volume on agriculture, pp. 1, 3.

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resolved to obtain the wealth and success for which they have come. They throw themselves into work with a feverish yet sustained intensity. They rise early, they work all day, they have few pleasures, few opportunities for relaxation. . . . All the passionate eagerness, all the strenuous effort of the Westerns is directed towards the material development of the country. To open the greatest number of mines and extract the greatest quantity of ore, to scatter cattle over a thousand hills, to turn the flower-spangled prairies of the Northwest into wheat fields, to cover the sunny slopes of the Southwest with vines and olives, — this is the end and aim of their lives, this is their daily and nightly thought. The passion is so absorbing, and so covers the horizon of public as well as private life, that it almost ceases to be selfish — it takes from its very vastness a tinge of ideality.[1]

It is difficult to imagine conditions more favorable to disappointment and discontent than those which inhere in such a social population as has just been described.

In the pursuit of wealth some, by reason of extraordinary diligence, extraordinary shrewdness or good fortune have been more successful than others. With the unsuccessful, even though they have done more than fairly well, the sense of not being as far along in the race as those with whom they made the start is irritating.[2]

Those who are "outstripped by others in the race for ownership are apt to overlook their own advance from the conditions of the past."[3] The farmers of the Western states, feeling that there ought to be a great deal in life for them, have not always withheld their complaints till they were deprived of the necessaries of life. Breathing an atmosphere of free speech from childhood, they have become accustomed quickly to give utterance to their feelings, and to express their disappointment when the horn of plenty has ceased to overflow.

3. The growing lack of social opportunity in farm communities has been another cause fruitful of rural discontent during the past thirty-six years.

[1] Bryce, The American Commonwealth, edition of 1888, vol. ii, pp. 681, 684.

[2] Pres. James H. Canfield, *The Forum*, vol. xviii, 1894–95, p. 460.

[3] Judge P. S. Grosscup, Commencement Address at Wittenberg College, Springfield, Ohio. — Chicago *Inter-Ocean*, June 5, 1896.

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Education, religion, art, science and literature are all dependent on a certain density of population. Schools, universities, churches, the daily newspaper, great publishing houses, libraries and museums come only when the population per square mile is expressed by more than one unit.[1]

During the last decade, rural population declined upon 16.25 per cent of the total area of the United States, upon 21.1 per cent of the total area of the North Central states, and upon 58.96 per cent of the total area of the North Atlantic states. During the same period, 43.26 per cent of the total area of Iowa lost in rural population; 47.39 per cent in Indiana; 61.39 per cent in Ohio; 65.73 per cent in Illinois; and 82.66 per cent in New York.[2] This decline in rural population, by lessening the social, educational and religious advantages of country life, has undoubtedly aggravated the feeling of agricultural discontent.[3] That the social life in many of the older farm communities is inferior to what it formerly was is a fact which few will deny. "The gathering together of all the neighbors for haymaking and houseraising, the apple-paring parties and the corn-husking bees are all experiences of the past."[4] The social opportunities of city life also have become increasingly attractive with the multiplication of centers of population, both in size and number; and, as a consequence, country life has become relatively still less desirable.

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[1] Giddings, Principles of Sociology, p. 367.

[2] Eleventh Census, volume on Population, part i, p. lxx.

[3] The fact that the trolley car is at the present time rendering country life less uninviting is of sufficient importance to deserve mention. "Much of the old isolation of farm life disappears when the farmhouse is within sight of an electric line. The young people find a new diversion in trolley rides. The farmers and their wives and children can go into the nearest towns to church, to amusements and to social gatherings with expedition and comfort." — E. V. Smalley, Chicago *Times-Herald*, July 23, 1896.

[4] Jane Addams, *American Journal of Sociology*, March, 1896, p. 549.

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JOURNEYMEN'S CLUBS.

A LITTLE work by Dr. Bruno Schoenlank, entitled *Social Conflicts Three Centuries Ago*,[1] and published in 1894, deserves attention as being a good deal better than its title, and as making a real addition to our knowledge of the sixteenth century. It is especially interesting in that it suggests some necessary criticism of certain other and more recent works that are likely to receive more notice in America and England.

The book deals with the *Gesellenvereinigungen*, or journeymen's associations, of Nuremberg in the fifteenth and sixteenth centuries; and, so far as the nature of such organizations is concerned, it adds nothing to what Schanz had said seventeen years before in his *Gesellenverbände*, except some additional and not altogether well-placed emphasis. The opening chapters suffer no little from bad rhetoric; and they are so vague just where definiteness is most called for that it is impossible to make out what the development of Nuremberg industry really was. Dr. Schoenlank tells us, for instance, that *Hausindustrie* and the *Verleger* were encroaching on the old *Handwerk* organization; he does not tell us in which crafts in particular that was taking place; nor does he seem to realize that the picture of poverty-stricken master-craftsmen, dependent on merchants, is hard to reconcile with that other picture of rich and haughty master-craftsmen exploiting their journeymen. Probably some crafts were entirely transformed; probably some quite new occupations, organized from the first on the "domestic system," sprang up during the same period; and probably some *Handwerke* survived, with but gradual and imperceptible changes of organization as time went on. It is this presence side by side of the domestic and the gild systems which adds so greatly to the difficulties of economic history in the period between the

[1] Sociale Kämpfe vor dreihundert Jahren: Altnürnbergische Studien. Von Bruno Schoenlank. Leipzig, Duncker und Humblot, 1894. — 212 pp.

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Reformation and the great inventions; and before we can judge of the position of affairs in any particular town or district we want some quantitative notion of the relative importance there of each system.

I have used "gild system" in default of any better term in English, although the name "gild" was seldom applied to an organized craft in the England of the later Middle Ages. In somewhat the same way modern German writers are apt to speak of *Zunftsystem*, even where, in the language of the particular time and place, no *Zünfte* existed; though they have hardly so good an excuse, since they have another term, *Handwerk*, ready to their hand. As Dr. Schoenlank shows, the term *Zunft* was abhorred by the town-council of Nuremberg, and its use was carefully avoided, until circumstances had altered and the city-fathers could afford to be careless in the eighteenth century. The council kept the several crafts under a very tight control, and regarded any unauthorized gathering of their members, or any independent decision by them in matters of trade policy, as *zünftisch*, and therefore as worthy of severe punishment. In 1592 the purse-makers of Nuremberg had to tell the purse-makers of Magdeburg that they could not as a rule communicate directly with them "because here there are no *Zünfte*." Still, it is evident that the *economic* significance of the *Handwerk* was much the same all over Germany, whether it had the *constitutional* powers of a *Zunft* or not. Dr. Schoenlank hardly brings this out with sufficient clearness. On the other hand, when he is speaking of the efforts of the journeymen to obtain some "jurisdiction" over their fellows, and connects these efforts with "differences of class interests" and the like, he seems sometimes to forget how little jurisdiction the *Handwerke* themselves enjoyed, even over the master-craftsmen.

In spite of the author's two chapters on "the beginnings of the organization" and "the progress of the *Gesellenverbände* in the fifteenth century," there is hardly any firm ground to stand on until we reach the *Gesellenordnung* of the purse-makers of 1530. Most of the religious fraternities of earlier times, of which he gives any account, were composed either of masters

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or of masters and journeymen; and all alike were dissolved at the Reformation (1524). By the end of the fifteenth century, however, in those crafts in which "wandering" became the rule, the customs had already grown up which were associated with the *Schenke;* and it is for the new light it sheds on the history of this peculiar institution that the book of Dr. Schoenlank is chiefly welcome. The *Schenke* was originally, perhaps, the cup of ale or wine given from the doorstep to a passing traveler; out of this grew the meaning afterwards attached to it in artisan circles, namely, the sustenance provided by his fellows for a traveling journeyman when he had reached a new town and was looking for work; and those crafts in which there was a regular system of such aid ultimately came to be distinguished as *geschenkte Handwerke.* In the sixteenth century, however, the term had come to include a good deal more: it meant primarily the periodical meetings of the journeymen, with all the festivity there enjoyed and the business transacted, as in the ordinance of 1530, "Item, every four weeks they shall have and hold *eine Schenke*";[1] and it meant also the tavern at which the meetings were held, and which served as the temporary residence of newly arrived journeymen until work was found for them. In modern German, of course, it simply denotes, in the straightforward language of Whitney's *Dictionary*, "a retail liquor-shop" — but the word has come down in the world.

In 1530 the imperial authorities and the *Reichstag* began an attempt, which we may provisionally describe, in contemporary language, as designed for "putting an end to" *Schenken.* The *Polizei-Ordnung* of 1530 remained, however, without effect — even after it was renewed in 1548. In March, 1551, the town magistrates of Augsburg and Ulm began to remonstrate with those of Nuremberg upon their laxity, and to urge common action; and in October, 1551, the authorities of Nuremberg ventured to call the craftsmen before them and to declare the *Schenken* abolished. But the free and imperial cities were alone in their action: most of the princes, and especially those

[1] Page 58.

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of the house of Austria itself, continued to disregard the ordinance; and the journeymen of those towns in which the *Schenken* were undisturbed put the craftsmen of Nuremberg who continued to work in their own town under so severe a boycott that the masters of Nuremberg were reduced to desperation, and persuaded the council, in October, 1553, to revoke its resolution. There were fresh imperial Recesses in 1551 and 1559 — all printed by Dr. Schoenlank — but nothing was done at Nuremberg, though the magistrates of Strassburg were so indignant with the sister city for its inaction that for a time they actually excluded Nuremberg men from their fair. The rulers of Nuremberg had learned that they were helpless unless the surrounding powers backed them up; and they waited until in 1567 they had induced the three circles of Franconia, Swabia and Bavaria to agree to common action. Then they made a fresh attempt; again the princes thought only of the immediate advantage of their own territories and deserted them; again there was a general boycott of Nuremberg and the cities acting with it; and at last in 1573 the magistrates were forced to make terms, and to consent to what Dr. Schoenlank calls "a compromise." With this the journeymen were content, and came back to work; and henceforth throughout the seventeenth and eighteenth centuries, in some cases well into the nineteenth, the journeymen retained their *Schenken* — or *Herbergen*, as they were soon more commonly called.

It is more difficult to judge of the inner significance of all this than to set forth its outward course. Dr. Schoenlank describes it as a struggle on the part of the journeymen for "the right of coalition" — and that to some extent it clearly was. The journeymen clung to their meetings in the *Schenke* or *Herberge*, and to their custom of fining absentees; they jealously guarded the right of *Umbfrag*, that is, the exclusive right of finding work for newcomers. A newly arrived journeyman had to make his way to the *Herberge*, where he was given bed and food till he could be provided for; and then, if he was accepted as *redlich* (honorable), that is, as bearing a good reputation, the journeymen officers regularly appointed for this

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purpose (*Wirthe*, later *Wirthengesellen*) went round with him to look for work (*um Arbeit schauen*). When the Strassburg authorities in 1563 sent to those of Nuremberg what we should now call a "black list" of six journeymen who had been fomenters of strife, and asked that it should be shown to the Nuremberg Girdlers, "so that they should give no work to them," the latter replied that masters had nothing to do with the finding of work: that was the journeymen's affair. This was the general custom, they went on, in all *geschenkte Handwerke* in the chief German towns; and whomsoever the journeymen might favor or hinder, the masters had to put up with it. If a journeyman hired himself directly to an employer, the journeymen fined him and held him *unredlich*. This right of the journeymen obviously gave them some advantages in determining the conditions of labor, and the masters would probably have been glad enough to destroy it. It is evidently the same right externally as that claimed by modern organized labor — the exclusion of non-union men from employment. But before we decide that the relations of the two parties to the labor contract were the same as in modern times, we have to remember: (1) that these journeymen were almost all unmarried; (2) that when employed they lived in the master's house; (3) that the masters had themselves usually been journeymen;[1] (4) that the numbers of masters and of journeymen were much the same — in one of the crafts of which we hear most there were 90 masters to 100 journeymen, and in another 50 to 70 or 80;[2] (5) that the Nuremberg masters certainly displayed no burning anxiety to put an end to the system; (6) that in spite of what Dr. Schoenlank says of the frequency of disputes about wages, he can produce but one example, that of 1601; and (7) that the journeymen submitted to a fifteen-hour day and that their efforts for "the limitation of the hours of labor" were limited to securing "blue Monday." Dr. Schoenlank quotes Schanz to the effect that their desire for a long rest after excessive toil was natural enough, and the remark is just: he is perhaps

[1] *Cf.* pp. 139, 141.

[2] Page 91; *cf.* smaller number given on pp. 62, 89.

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too much occupied with the economic aspects of the holiday to have a word to say about its moral aspects.[1]

This brings us to another feature of the *Schenke* which may be clearly seen in the documents which Dr. Schoenlank faithfully reprints, but of which he says nothing. It is over and over again charged against the *Schenke* that excessive drinking went on there, especially when newcomers were welcomed or old comrades parted with on setting out for their journeys; that unduly large fines were demanded from absentees, which those who attended used for their own refreshment; that the 'prentices (*Buben*) were allowed to come and given too much to drink. The text of the imperial *Polizei-Ordnung* of 1531 does not give us the impression that it was directed against a class separated from the masters by a social chasm: it deals with the "masters' sons, journeymen, servants and apprentices"[2] all alike. It complains of their "running around in idleness, their guzzling and gorging;"[3] and lays down that when a newcomer arrives in a town, he is to go to the bedel of his gild (*Zunft-* oder *Stubenknecht*), and where there is no *Zunft*, as in Nuremberg, to the journeymen's *Wirth* or *Vatter* (the keeper of the journeymen's tavern), or to some other trusty individual appointed by the authorities, and this person is to find him work. The journeymen are not to elect officers of their own for the purpose; and, whatever is done, "the whole business of drinking and eating on arrival and departure" is no longer to be permitted.[4] In the final town ordinance of 1573, while the journeymen are to have their *Herberge* where newcomers are to be put up, and the officers of the journeymen (*Zuschickmeister*) are to look round for work for them, it is insisted that this shall not be made the occasion of a drinking.[5] In this *Herberge* the *Gesellen* can have a room, and they can meet there once a month, to

[1] On this, see the language of the ordinance of 1550, p. 132.

[2] "Von handwerks-söhnen [or in the body of the ordinance, meister-söhn], gesellen, knechten und lehrknaben."

[3] "Wegen des müssigen umgehens, schenkens und zehrens" (pp. 188, 192).

[4] "Doch soll in und nach dem allen das sämtlich schenken und zehren zum an- und abzug oder sonst in andere weiss keineswegs hinfüro gestattet werden" (p. 189).

[5] "Doch soll keine schenke oder zeche deswegen gehalten werden" (p. 109).

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discuss their affairs; though care is taken to insist on the presence of one of the elected officers of the *Handwerk* itself and on the extremely small powers the assembly is to exercise in the way of imposing fines without special authorization. But equal care is taken to restrict the amount of drinking, to prohibit indecent songs and gaming, and to prevent brawls.

The evidence is too large and too consistent through more than a century to allow us to suppose that these moral dangers in the *Schenken* were pure inventions on the part of the masters. They may, of course, have been unduly emphasized by the latter, to conceal their own economic purpose; but they ought at least to be mentioned by modern writers, if we are to have a complete view of the situation. One knows with what lofty contempt Marxists regard those who venture such remarks: such things are all bound up with "the standard of living," they tell us, or are "economically conditioned." But the practice of writing social history with practically no mention of some of its important ethical aspects goes far toward creating from the socialist side an "economic man" almost as unreal as that of the economist.

It will be remembered that in the recent work of Mr. and Mrs. Sidney Webb on English trade-unionism, the authors declare that they cannot trace beyond the eighteenth century any "continuous organizations of wage-earners for maintaining or improving the conditions of their employment." They have waved aside the examples of mediæval yeomen's or bachelors' companies in England; and though it might still be maintained that some of these are best explained as "*continuous* organizations of *wage-earners*," Mr. and Mrs. Webb have certainly cast some doubt upon the interpretation given to one such case — the Bachelors' Company of the London Tailors in the sixteenth century. The question of mediæval journeymen's associations in England must be left open for the production of further evidence;[1] and meantime those who are interested in it may be referred to Professor Brentano's article — interesting, among other reasons, for the glimpse of autobiography it contains — in

[1] For a fresh example, see *Quarterly Journal of Economics*, XI, 214.

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Braun's *Archiv für Soziale Gesetzgebung* (vol. viii). But Mr. and Mrs. Webb's book also contains some information which, looked at from the standpoint now reached, receives a new significance. They call attention to "the existence" in the eighteenth century "of journeymen's associations in most of the skilled trades." They point out that "the earliest trade unions arose among journeymen whose skill and standard of life had been for centuries encouraged and protected by legal or customary regulations," and again that

> the typical "trade club" of the town artisan of this time was an isolated ring of highly skilled journeymen, who were even more decisively marked off from the mass of manual workers than from the small class of capitalist employers. The customary enforcement of the apprenticeship prescribed by the Elizabethan statutes and the high premiums usually exacted from parents long maintained a virtual monopoly of the better-paid handicrafts in the hands of an almost hereditary caste of "tradesmen," in whose ranks the employers themselves had for the most part served their apprenticeship. Enjoying, as they did, this legal or customary protection, they found their trade clubs of use mainly for the provision of friendly benefits, and for "higgling" with their masters for better terms.[1]

Such trade clubs are regarded by Mr. and Mrs. Webb as altogether new, and as "due to something peculiar to the century;" and they are described as "springing not from any particular institution, but from every opportunity for the meeting together of wage-earners of the same trade."[2]

The more we look into these trade clubs, however, the more we are struck by the resemblances between them and those German institutions of an earlier century which Dr. Schoenlank and others have described. That the gatherings were usually monthly in each case might be a mere coincidence. But when we find that "the relief of traveling journeymen was a prominent object of the early unions"[3] in some English industries, the resemblance seems to go to the essence of the institution. And when we are told by Mr. and Mrs. Webb that in some instances

[1] History of Trade Unionism, p. 38.
[2] *Ibid.*, p. 21. [3] *Ibid.*, p. 24.

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"the journeymen of a particular trade frequented certain public houses, at which they heard of situations vacant, and the 'house of call' became thus the nucleus of an organization," [1] the inference seems natural that in these "houses of call" we have an institution like the German *Schenke* or *Herberge*, with probably a similar past history.

The "houses of call" are mentioned in certain documents referring to the tailoring trade in London; and these Mr. F. W. Galton, Mr. Webb's assistant in the preparation of material for the *History of Trade Unionism*, has since published under the auspices of the new London School of Economics.[2] Mr. Galton quotes a description of the houses of call given by a contemporary in 1747, from which we learn that "masters go there to enquire when they want hands," and "custom has established it into a kind of law that the house of call gives them credit for victuals and drink when they are unemployed." [3] As to the character of some of the proceedings at the monthly meetings, we may form some idea from what Samuel Bamford tells us of his visit to the trade clubs of London in 1815: "They would generally be found in a large room, an elevated seat being placed for the chairman. On first opening the door, the place seemed dimmed by a suffocating vapor of tobacco. . . . Every man would have his half pint of porter before him." [4]

But one need not stop at the eighteenth century. Let any one read, in the last chapter of the *History of Trade Unionism*, the vivid account of English trade-union life of to-day from the pen of one who has shared it. In the account of "going on tramp," we hear of the footsore traveler making his way to the public house at which the local lodge is held, and refreshing himself before starting off to find the secretary; of the secretary writing an order "to the publican" to provide the full relief of sixpence and a bed, and telling the tramp to repair to any suitable situation he may know of in the morning; and of many like details. Let any one remember how the "Non-

[1] History of Trade Unionism, p. 22.

[2] Select Documents Illustrating the History of Trade-Unionism. I. The Tailoring Trade, 1896.

[3] *Ibid.*, p. 4, n.

[4] Passages in the Life of a Radical (ed. of 1893), II, 25.

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conformist conscience" of the chapel-going and teetotal workman of the generation now passing away used to look on the lodge-night and its dangers. One will, I think, begin to doubt whether there has not been for centuries more continuity than is commonly supposed in the life of the skilled artisan class in the older trades.

Apropos of certain trade societies of 1721, Mr. Galton himself remarks that "we may infer from the subsequent events that the origin of the organization was not so recent as the employers supposed," or rather stated.[1] My own impression is that we shall by and by find that, like the usages of the German journeymen in the eighteenth century that centered in the *Herberge*, the trade clubs of eighteenth-century England were broken-down survivals from an earlier period, undergoing, with the advent of the *married* journeyman and other causes, the slow transformation from which they emerged in the nineteenth century as the nuclei of the modern trade unions.

The point is of so little importance in reference to the problems of this century that one is almost afraid to call attention to it, lest it should be supposed that more significance is attached to it than is really intended by the present writer. The conditions of this century are new in so real a sense that, as has already been pointed out in the foregoing criticism of Dr. Schoenlank, they have called forth substantially new institutions. Even if it could be proved that any trade society of to-day is historically a continuation of some definitely constituted society of a much earlier date, the fact would have but slight significance; and for the present even that much is not maintained. What is suggested is only that the habit of acting together in certain ways, which we find to characterize the journeymen of the eighteenth century, had been formed in a much earlier period.

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Since the above was written, I have received from a London artisan a very interesting account of his experiences when

[1] The Tailoring Trade, p. xv.

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he came up from the country to work as a silk-hat finisher in 1856. It describes conditions that have already passed away, and will soon be forgotten; and these conditions present features closely resembling in many respects the usages of the journeymen's societies of earlier centuries, as set forth by Dr. Schoenlank.

There were then four distinct societies in London, *viz.*, the Blue society (composed of Christy's workmen), the Bull society, the Nelson society and the Fair Trade. . . . In February, 1858, the Blue society was reorganized, and I was asked to be secretary. I was so for three months, until the rules were passed. We sat at the "Anchor and Eight Bells," Bermondsey Street, to take contributions. While passing the rules, and at all quarterly and general meetings, we were crowded into the large room over the tap-room and bar. Smoking went on, at least eighty per cent smoking. From 90 to 120 would be present, and some would pay a sixpenny fine and stay away. The President, Committee, and Secretary would sit at one end of the room. . . . Pint pots were very plentiful on the different tables, and at intervals there was a pause, the pot-man coming into the room crying out: "Give your orders, gentlemen." These meetings were held at 8.30 (no matter what time work ceased at the factory), to give members at Christy's retail shops a chance to be present. I mention this because many of the men would go into the "turn-house" an hour or two early, as it would be too far for them to go home and return. There was therefore a great amount of drinking before the meeting, and a good few would stay after the meeting until closing time. . . . It was the landlord of the turn-house in Bermondsey Street who was treasurer.

Now that all the societies have been united, the trade turn-house is still at a public-house; but all delegate and general meetings are held in the large room of the Southwark Radical Club; and there is no drinking during the meetings. Indeed, the leading spirits in the last great strike were lifelong abstainers.

Of the drinking usages in the workshops themselves my informant also gives some particulars. On the day he began to work, he tells me:

I found it was necessary to pay "a maiden garnish" of five shillings, it being my first shop in London. On this floor there were 66 finishers in three "shops" or "batteries": 12 men in one, 22 in

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another and 32 in the one in which I worked. To this "garnish" 28 men paid twopence each (there being three apprentices and myself, making the 32); so to drink my health and wish me well nine shillings and eightpence was spent in beer, on that account alone, on that day in that battery. I was very anxious about my work, — coming, as I had, from a country shop, — and if it had not "served turn" (*i.e.*, been passed by the foreman), I should have been "off"; and the 28 men who had partaken of my "maiden garnish" would have paid twopence each as "treatings off"; and all I should get would be the right to drink from the four and eightpence worth of beer. I won't moralize, but I must say I thought this a cruel wrong, and I determined to make a dead set against that custom as soon as I got "the hop of the cage"; and in three months I carried in that shop a resolution that any man "off" from that battery should receive the twopences in money, which was called "dry garnish."

There were all kinds of other dues. If there was a vacant plank, and a man wished to move to it, he had to pay "a plank gallon." If a man had never before put on a silk "under," if it was known, there was "a fancy gallon" to pay, and many others of a like kind. Moreover, the two publicans, one each side of the factory gates, had the free run of the place; and they and their potmen came in frequently for orders. There was never much ready money with the men, but there was a man in each shop empowered by a publican to write tickets for beer, to be paid from their wages, with usurious interest, at the end of the week.

This is, however, almost all a thing of the past. The present "Rules of the Journeymen Hatters' Fair Trade Union of Great Britain and Ireland" enact that

> All dues, such as marriage beer, garnishes, maiden garnishes, plank beer, fancy gallons and wager beer, are done away with.

My informant tells me that the publican's agent has also been abolished.

There was and is still, though it is evidently decaying, a curious system of shop jurisdiction, which presents many apparently archaic features. The procedure preserves several terms on which modern dictionaries give no help.

When workman A called B by an opprobrious name, which the latter resented, B could "weigh out the caulker," by declaring, "If

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your name is A, a man of this shop and a shopmate of mine, I caulk you: prove me (to be so and so) before you hat, or pay sixteen pence for larking."

At this the "constable" of the shop called out, "Gentlemen, the caulker is out." Every man in that battery had ceased work. Now A could either "call his words in again" or "give the wrong insist." If he did the latter, the constable at once said, "a garrett in ten minutes." The garrett was formed by the men of the battery; and if they decided that A deserved the reproach, he was fined four shillings, which was spent in beer in that battery. The case could, however, have been taken to the higher court — "the dozening," the men for which would have been selected from a dozen shops.

The present rules of the amalgamated society still enter with some detail into "caulkers," "wrong insists," "garretts," and "dozenings"; but their purpose is "to prevent them as much as possible." The fines now go to the general funds, and drunken men are disqualified from voting or "insisting."

There is one other term used in the hatters' trade, which is so odd and apparently so completely unknown to philologists, that it may be well to mention it here. An apprentice put under a journeyman for a period of six months' instruction is called his "whimsey," or said to be "under whimsey"; the instructor is called the "whimsey-master," and the occupation of the boy is called "whimseying."

It is certainly surprising to come across so many quaint usages in an industry which would seem to have passed through the "domestic" or "sub-contract" stage in the eighteenth century;[1] and which one would have supposed to have been altogether transformed by the substitution of silk for beaver at the beginning of the present century. This account suggests the desirability of securing trustworthy records of old trade customs, before they are destroyed (in many cases very properly destroyed) by temperance, book-learning, the newspaper and increasing freedom of intercourse.

W. J. A.

[1] Howell, Conflicts of Labour and Capital, ch. ii, § 55.

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REVIEWS.

Economics: An Account of the Relations between Private Property and Public Welfare. By ARTHUR TWINING HADLEY. New York, G. P. Putnam's Sons, 1896. — 496 pp.

Professor Hadley has felt himself compelled to abandon the time-honored division of the science into the departments of production, distribution, exchange and consumption. The successive chapters of his book are accordingly headed as follows: "Public and Private Wealth," "Economic Responsibility," "Competition," "Speculation," "Investment of Capital," "Combination of Capital," "Money," "Credit," "Profits," "Wages," "Machinery and Labor," "Coöperation," "Protective Legislation," "Government Revenue." It is difficult to exaggerate the wealth of thought and the keenness of analysis contained in these chapters. Each one is crammed full of matter, presented in a most attractive manner, illustrated by references to history and to contemporary business methods, and often summed up in some phrase or some statement of likeness or unlikeness that is pregnant with suggestiveness. The distribution of topics under the particular chapter is always suggestive, if sometimes surprising. Under "Economic Responsibility," for example, we find slavery, property, the theory of population, poverty and poor-relief; under "Investment of Capital" we find the wage system, private land-ownership, payment of interest and limited liability; under "Profits" is found the rate of interest, economic rent and commercial crises; under "Coöperation," governmental management of industrial enterprises.

Although the reader is sometimes surprised by this distribution of subjects, he finds each topic discussed exhaustively and with unity of purpose. Thus, the chapter on "Money" is altogether admirable, treating both the theory and practical questions, such as the free coinage of silver; the chapter on "Speculation" introduces material that is new in most English treatises and of absorbing interest; the formula that wages depend on maximum economy of consumption throws a flood of light on the various theories of wages; and the thoroughly practical treatment of usury laws, of the unearned increment, of the regulation of monopoly profits, of the

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single tax and of progressive taxation, admitting the force of the theoretical arguments but emphasizing the practical difficulties, will command attention from every one.

When a book is so very good, it seems ungracious to criticise it because it is not better. Economists, however, whether of the closet or of the market-place, and especially teachers of economics, will involuntarily ask themselves whether Professor Hadley, in his *Economics*, does for "the readers of to-day that which Mill did with such signal success for those of half a century ago" (Preface). As regards his treatment of practical problems, this question can undoubtedly be answered in the affirmative; but in respect to his development of a system, which should carry conviction as a logical whole, I am afraid that it must be answered in the negative.

The reason for this is the arrangement of the book itself: the breaking away from the traditional arrangement is unfortunate in two respects. In the first place, a division of the subject into departments, even if not strictly logical, makes it easier for the student to master the subject. Professor Hadley has been unfortunate, I think, in over-estimating the capacity of students, whether "engaged in the business of the world or preparing themselves to do it," to follow his fundamental idea through the mazes of practical discussion.

In a second respect the arrangement of the book is unfortunate. It puts forward as the central idea the notion of the speculator or undertaker. Wages are an investment of capital; interest is but commuted profits; property exists because society chooses to commit the control of productive power to a few leaders; even the mistakes of the speculator benefit society because they are made on a small scale. All this will strike the superficial reader as a mere apotheosis of Walker's or Mallock's "captain of industry." This leadership is certainly one of the salient points of the modern industrial organization, and the tendency is to emphasize it in treatises on political economy. Even Marshall, towards the end of his first volume, declares that "in the modern world the employer or undertaker . . . acts as the boss of the great industrial wheel. The interests of owners of capital and of workers radiate towards him and from him; and he holds them all together in a firm grip" (*Principles*, p. 617).

This truth is demonstrated in an overwhelming way by Professor Hadley. But the emphasis given to it by the arrangement of the book seems to exalt that which is the method of industrial organization to a position as the end and goal of social organization. This gives to

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the whole book a tone of finality and of harshness, which recalls some of the old charges against political economy as the dismal science. Adam Smith avoided such an effect (and could avoid it) by emphasizing the interests of the nation as against the mistaken notions held by those who controlled governmental power. Mill avoided it by the attention he paid to peasant proprietorship and to the "probable future of the labouring class," and by his evident sympathy with the aims of socialism. Marshall avoids it by a display of pure sentiment, as in the statement in his first chapter that "the question of the abolition of poverty is that which lends its chief interest to economics." With Professor Hadley, admiration for the framework of society seems to overshadow consideration of the fate of the mass of human beings in that society. This is not really the case, for the author firmly believes that private wealth means public welfare. That an erroneous impression may be gained from the book is, however, a great misfortune; for the work is otherwise likely to do much good among the people who think that poverty can be abolished.

Economists will feel great interest in learning Professor Hadley's views in regard to the theory of distribution. In accordance with his attempt to keep theory and application together, they are scattered through the book. In his chapter on "Profits," however, he writes as follows:

> The distributive process, whose workings have been described in this chapter, may be summed up as follows:
>
> The competition of capitalists with one another leads them to advance to the laborers a sum equal to the expected price of the product, less a compensation for waiting and the risks attendant upon it, sufficient to induce the proprietors to hazard the required amount of capital. The advances constitute wages; the excess of the product above such advances constitutes profits.
>
> By a somewhat similar process, the competition of the more active capitalists with one another leads them to guarantee to those who will lend them capital a fixed rate of income for the use of such capital. This income, guaranteed but not advanced, is known as interest; the remaining profit is known either as net profit for skill in management, or economic rent for foresight in investment. The separation of interest from net profit or rent results in a separation of the reward for waiting from the rewards for risk and foresight.
>
> Wages are, in all ordinary cases, guaranteed and advanced by capitalists as a body. Interest is guaranteed, but not advanced, by one group of capitalists to another. The justice of the charge made for such guarantees and advances is to be defended, not because the enjoyment of interest

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corresponds to the sacrifice of waiting or because the amount of profit corresponds to the risk of loss, but because society finds itself best served by the system of guarantees and advances which the institutions of wages and interest serve to encourage [p. 299].

This statement may be interpreted in a variety of ways; and in whatever way it is interpreted, it will be apt to do injustice to the rest of the book and to the fundamental thought of the author. That is to say, the statement is of such a nature that, if one says it is too narrow, he can be answered that the rest of the book is an amplification of it; and if one says that it is too broad, he can be answered that it is limited by what is said in the rest of the book.

In the first place, the statement is too narrow. It merely describes what is going on (for the most part) in the modern industrial world, namely, the process by which the employer pays wages and interest on borrowed capital, and gets the full product. This, however, is not a complete statement of the facts, for it does not include the method of remunerating the thousands of independent artisans and farmers. Even if it were so inclusive, it would not answer the real problem of distribution by telling what determines the shares of the employers, of the capitalists and especially of the laborers. Professor Hadley may answer that this summary applies only to profit and interest; and that it explains only the outward *process* of distribution, but is not a theory of distribution. The impression will, however, remain that the controlling force in the whole process of distribution is the employer — that the only influence is competition of capitalists with one another.

The real process of distribution is a much more complicated matter than would appear from this statement. It involves competition on both sides, and is influenced by the environment and by social institutions. This idea is developed in later parts of the book, notably in the discussion of minimum wages (p. 305) and of the residual theory of wages (pp. 317, 318), where it is made very clear that the process of distribution described above is not broad enough to be considered a theory of distribution. I think that it would have been helpful for his readers if Professor Hadley had gathered together the principles developed under "Wages" and "Machinery and Labor," and, adding them to the theory of profits, had formulated a comprehensive theory of distribution. That he does not attempt to do this seems to be due (1) to a repugnance to certain theories which in his opinion explain too much, and

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(2) to a desire to reintroduce the "historical" explanation which in the abstract analysis is often lost sight of, and which thus (as the Germans would say) comes to its rights.

Professor Hadley characterizes certain modern theories of natural value as a "curious aftermath of the old theories of natural rights" (p. 148, n.). They assume, according to him, "a certain normal degree of intelligence in the investment of capital and development of land," and this we have "no right to assume." The criticism does not seem to me to be just. The reason why rewards are imputed to land, labor and capital is not because they or their owners have any "natural right" to it," but because society wishes to employ land, labor and capital in the most economical way, and (under the system of private property and free competition) offers a reward for their use in proportion to their efficiency. The normal degree of intelligence is no greater and no less than that assumed for the speculator in advancing wages and guaranteeing interests. Again, the theory "that the price paid for an article is distributed among laborers and capitalists on the basis of the marginal utility of the labor and capital which have contributed to its production" is criticised by Professor Hadley on the ground that it does not take into account the mistakes of the speculator and that we do not know the relative values of products at two different periods. This does not seem to me to be a full answer to the theories. According to von Wieser, at least, experience and tradition would be our guides in this matter; and, although these are fallible guides, they must approximate a true result in the mass of cases, or else society would starve to death through not knowing how to make use of its resources.

Rejecting all these theories, Professor Hadley returns to the historical explanation in the words already quoted above:

> The justice of the charge made for such guarantees and advances is to be defended, not because the enjoyment of interest corresponds to the sacrifice of waiting or because the amount of profit corresponds to the risk of loss, but because society finds itself best served by the system of guarantees and advances which the institutions of wages and interest serve to encourage.

This is certainly fundamental, but it makes the statement too broad. Social expediency is, indeed, the basis of the institution of private property and of the principle of economic freedom. As Professor Hadley himself says so epigrammatically:

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We may fairly grant the claim of the socialist that capital originated in robbery. In like manner, labor originated in slavery. Neither fact has any appreciable bearing on present issues. Neither fact tends in the least to prove either that the capitalist is a thief or the laborer an inferior.

Private property and economic freedom are, however, relative terms, and either may be modified at the pleasure of society. Both are limited in a great variety of ways in the modern industrial organization. It is not sufficient simply to allege social expediency as the ground for the toleration of the modern distributive process. The reasons for it must be shown fully, and emphasis must be laid upon the limitations of the abstract principle which are found in actual practice. Quantitative measurements of the result of this distributive process should also be sought. The whole question is one largely of emphasis; and I should say that the limitations, as in the case of Irish land tenure, are not sufficiently emphasized, while the doings and the sufferings of the speculator are unduly magnified.

These are, however, but slight criticisms of a book which is certainly very notable, even if it is not destined to leave a mark on economic thought.

RICHMOND MAYO-SMITH.

Wages and Capital; an Examination of the Wages Fund Doctrine. By F. W. TAUSSIG, Professor of Political Economy in Harvard University. New York, D. Appleton & Co., 1896. — xviii, 329 pp.

This book consists of two main parts — a historical resumé of the wages-fund controversy, and a presentation of the author's own conclusions on the subject. The historical portion is by no means unimportant: in fact, it cannot fail to receive commendation from all quarters for impartiality of treatment, acuteness of criticism, fullness of knowledge and clearness of style. This review, however, must be confined to the author's "positive theory" as contained in the first 125 pages of the volume.

Among the limitations which Professor Taussig places on the problem he is investigating is one that deserves a special word of comment. He limits the problem to the determination of "the total that goes to laborers as a whole." "It is only with the total," he says, "that the wages fund, or the discussion of wages and capital, has to do" (p. 109). "The causes which determine the share which a particular set of laborers shall have are different," and present a

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different set of questions. This distinction, to be sure, is made with practical unanimity by the adherents of the wages-fund doctrine in any of its forms: it may almost be considered their shibboleth. The author accepts it without question. May we venture to suggest that it is the fundamental source of what seems to be the error in the view he presents? "Total wages" is an abstraction — and, moreover, a useless and misleading abstraction. To suppose that one set of forces determines the total going to laborers, and that another set of forces then distributes this among the different classes and individuals, is to reverse the true order of fact and of thought. Total wages are merely the arithmetical sum of individual wages. The latter are in a sense the dynamic element; the total is a passive result. To view the matter otherwise is to go astray at the earliest stage, and to set one's self seeking for a shadowy and uncertain explanation of a vague and shadowy thing.

Professor Taussig's first chapter, entitled "Present Work and Present Wages," is devoted to a very lucid description of the leading features of the modern industrial process. In the case of the great multitude of products, as he shows, a long series of acts extending over a considerable period is necessary before the finishing touches are put upon them. The conclusion is clearly drawn that "present labor produces chiefly unfinished things, but the reward of present labor is finished things." In the sense that "the current yield of industry" (p. 22) is always having put to it the finishing touches, wages may, indeed, be said to be paid from current product; but in a truer sense "real wages are virtually to their full extent the product of past labor" (p. 17).

The main conclusion of chapter two, entitled "Capital and Wages," is as follows: Taking wages to "mean all the income of all laborers" (p. 43), and capital to mean "that supply of inchoate goods, in all stages toward completion, from which the steady flow of real income is derived" (p. 44), "we may lay it down broadly," says Professor Taussig, "that wages are derived from capital" (p. 43). This proposition "has nothing to do with money or money wages" (p. 45). "The relation of wages to capital," here expressed, "would be the same under any social organization" (p. 45). Real capital, under any rational conception, consists of "things tangible and usable"; real wages, of "the enjoyable commodities which the laborer gets" (p. 46).

The author perceives, however, that this proposition is entirely too general to be used to support a doctrine of a wages fund. He admits that

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this reasoning, while directed to wages, applies equally to every other form of income. . . . [What] is true of wages is true of interest and rent and business profits. All are derived from capital in the same sense. . . . If any law of wages has been reached . . . it is but a statement of the fact that all the enjoyment of to-day comes from commodities which are the product of past labor [p. 48].

The result thus reached would appear very neatly and conclusively to dispose of the concept and phrase "wages fund," except as a literary curio. In the same sense and with equal scientific significance can it be said that there is a profit fund, an interest fund, a rent fund — a possibility which earlier in the book (p. 16) does not escape the author's notice. Yet he would not have the reader draw a conclusion which his own conservatism hesitates to accept. The reader's judgment is therefore suspended by various expressions: "if any law of wages has been reached" (p. 48); "and yet there is something more to be said of wages and capital than this general proposition;" "the unmistakable differences in the mode in which the various members of the social body get their share of the general income bring some important consequences, both as to distribution at large and as to wages and the *wages fund*." These expressions indicate that the author intends to retain the expression "wages fund," and to show that there are good reasons for looking upon such a fund as differing in some points worth the noting from the part of the social income going for rent, for profits and for interest.

In carrying out this purpose the author may fairly be expected to conform to certain minimum requirements. First, we are justified in expecting that real wages, and not mere money wages, shall be the subject of his discussion. Professor Taussig keenly appreciates the proneness of other writers to err at this point. "The obvious distinction between real wages and money wages," says he, "makes its appearance in every book on the elements of economics, but it is too often forgotten when the causes determining wages come to be examined" (p. 15). As he elsewhere expresses it (p. 231), this is a convenient short cut which breeds confusion in the mind of the reader while veiling the real question. (See also pp. 17, 19, 45, 46, 47, 231, 245, 247, 297 *et passim*.)

Secondly, we may expect that he will avoid the error, to which he so frequently refers, of considering that the "capital"— the "fund," whatever it be called, that constitutes real wages — is "necessarily owned by the individual who pays wages." "Such reasoning," as he says, "does not touch real capital or real wages" (p. 46).

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The capitalists who directly employ laborers have usually no ownership of the commodities which make real wages. If these real wages come from capital, the capital is certainly not in the hands of the employers [p. 20. See also p. 258 among others].

Thirdly, we may justly require of the author a comprehensible explanation of the way in which the "wages fund" is marked off from, or carved out of, the total income of the community; and we may expect that in some important respects this shall be shown to differ from the process which apportions the shares of the other factors in distribution. This "total income," elucidated by the author in the first two chapters, is essentially the "subsistence fund" of Böhm-Bawerk. Yet the author says: "There is an obvious difficulty in the fact that the general subsistence contains the income not only of laborers, but of the whole community" (p. 316). Indeed, he thinks the Austrian writer has gone "but a very little way toward explaining just how the total subsistence fund and its ripening installments are diverted to one and another class in the community" (p. 317). When Professor Taussig further adds that "an investigation of the machinery of distribution . . . is the essential part of the wages-fund problem" (p. 317), he seems to imply a promise to make an examination of these "essential" questions before quitting the subject. Moreover, the promise is made distinctly (p. 16) where the author says that the question "whether there can be any possibility of separation of this net income into parts destined for any one set of persons, or appropriated to them," will engage his attention "at a later stage."

Every one of these minimum requirements the author fails to meet. First, instead of striking straight at the fundamentals and refusing to consider the mere "machinery by which laborers are enabled to get their real wages" (p. 15), he makes this machinery, that is, money wages, a central object of his attention. Having devoted some discussion to "real income and real wages," he begins a fresh chapter with the announcement: "In the present chapter money and money income play a vital part" (p. 51). The suddenness of this change of face comes as a surprise and a disappointment to the reader. Moreover, throughout the chapter the discussion blooms with that perennial error, emphasis of the superficial monetary aspects of the problem. Money income and money payments, flowing first into the hands of the immediate employers, absorb all the author's attention. Further, repeated use is made of "funds" in the sense of money funds in the hands of the employers. Among numerous instances one of the most noteworthy is the following:

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The hired laborer gets his wages from capital in a sense in which the independent workman does not. His money income . . . is turned over to him by capitalists. It comes from *funds* in the possession of a body of which his immediate employer is a member. . . . In this sense his earnings depend on a wages fund — on the sums which the employers judge it expedient to turn to the hire of labor [p. 75]. . . . [With the same connotation he says :] In an important sense hired laborers are primarily dependent for their wages on the *funds* which the whole body of active capitalists can and will turn over to them [p. 78].

It is unnecessary and, indeed, impossible here to follow out all the details of the reasoning on these points. The author himself in his criticism of others has most satisfactorily shown that such a treatment but skims over the surface of the question. It ends in what seems little more than a mere verbal quibble.

The second requirement is met no more satisfactorily. The capital or funds that are discussed are throughout looked upon as in the hands of the employing class, except where the conception is widened to include the great body of money-lenders "whose business it is to make advances to the more immediate directors of business affairs" (p. 63). Throughout the chapter the concept of capital, or funds, fails to include all the sources of the real income that the laborers enjoy — for example, stores of goods in the hands of independent producers, and even a portion of labor itself, so far as personal services make up that real income. There is no hint that such elements may play a part in determining the remuneration of labor.

Nor is the third requirement fulfilled in the author's discussion. He practically brushes aside, when he reaches it, the problem of the fixing of the shares in distribution. Nowhere does he show that there is anything peculiar about the part going to labor that can entitle it, in distinction from the other parts, to be called a fund. He summarizes his own results in these words :

In fact the wages-fund doctrine, or what there is of truth in it, . . . can tell us little . . . as to the fundamental causes which . . . determine the share of that real income which in the long run shall go to wages or interest or rent (p. 322).

Moreover, Professor Taussig does not show what the fundamental causes are which determine the different shares at any given time. Once he confesses that his examination of "the immediate source of the money wages of hired laborers is at best incomplete ; the inquiry as to the source of real wages remains the important one in the background" (p. 64). But with the remark that "the questions as to the

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machinery of immediate money wages are important enough" (p. 65), he returns to their consideration. The reader looks in vain for any further light upon this question in the remaining chapters.

The "main conclusions" reached by the author appear to be that there is more than one tenable sense in which a wages fund may be spoken of — that, indeed, there are *two* wages-fund doctrines. Neither is quite like the doctrine as held by the older economists. The one is broader than theirs — so broad, in fact, that it seems to the reviewer nothing more than a statement that what the laborers enjoy is a part of the total income of society. In this it is hard to recognize more than a bald truism. The second doctrine which the author presents is the one wherein the superficial monetary aspects alone are kept in view. This is impressed upon the reader with much emphasis; yet, as my italics show, the author's faith fails him when he comes to state it for the last time:

> Hired laborers are dependent on a wages fund (*if one chooses so to call it*), which is in the hands of the capitalist class. Their money income is derived from what the capitalists find it profitable to turn over to them [p. 321].

No further citation is needed to indicate that the author has, without intending it, given the *coup de grâce* to what was left of the old wages-fund doctrine. He intends to be conservative, and he shrinks from the logical conclusions of his own reasoning; yet no one, so effectively as he, has shown that the wages-fund doctrine, in any tenable form, is *nominis magni umbra*.

FRANK A. FETTER.

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Uebersichten der Weltwirtschaft. Begründet von Dr. F. X. VON NEUMANN-SPALLART. Jahrgang 1885–89, mit Ergänzungen teilweise bis 1895, von DR. FRANZ VON JURASCHEK. Berlin, Verlag für Sprach- und Handelswissenschaft, 1896. — cxx. 766 pp.

The appearance of a new edition of this well-known manual of economic statistics deserves more than a passing notice. Dr. von Juraschek has worthily continued the labors of his predecessor, and we have here the most trustworthy statistics gathered from official sources and arranged with scientific care. They include, first, the statistics of the production, exports and imports of grain, and of the production of live stock, sugar, coffee, tea, tobacco, wine, beer,

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coal, iron, cotton, wool, silk and other textiles; and, secondly, the statistics of gold and silver, of bank notes and credit papers, of post offices, telegraphs, railroads, shipping and of commerce in general. No one who has occasion to make international comparisons in connection with any one of these subjects will fail to make use of the data here given and of the references to the official authorities. All that can be accomplished with this enormous and unwieldy mass of material has been successfully accomplished here.

Dr. von Juraschek, like his predecessor, has not been content to compile a mere manual of economic statistics. The real object in collecting these statistics is to throw light on the condition and the progress of the world economy. He points out how, notwithstanding the revival of protectionism since 1879, international economic relations become more and more important and receive further recognition. The most important factor in this respect has been the development of the means of transportation and communication. By individual agreement the railroads and shipping lines have in many cases united to facilitate international transportation. Official recognition has been given to the International Postal Union; and the telegraph lines are included within a similar union. Efforts are being made to establish systems of weights and measures, and even of money, over complexes of states. More and more effectively private capital and enterprise are bringing different countries closer together in economic relations. The author sees in all this the development of a "world economy," which appears as the highest "organism" whose mission it is, not to obliterate the individual states, but to bring them to the highest manifestation of their powers. We may not agree with him in desiring to use the name organism for these international relations, but we must own that it is an important service to bring out the importance of these relations.

The second object in collecting these statistics is to study the course of development. The author finds that during the last twenty years national wealth has greatly increased in all the countries of Europe and in the United States. Fluctuations in the annual production and consumption of the chief commodities show us the depression which followed the crisis of 1873, the recovery towards 1879, the second crisis in 1884 and the recent panic of 1893. The author points out that while the United States is yet suffering from the effects of 1893, England and Germany, at least, began to recover in 1894. These primary symptoms are confirmed by the study of

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secondary phenomena, such as imports and exports, prices, discounts, wages, bankruptcies, strikes and migrations. The whole forms a brilliant example of the scientific use of economic statistics.

RICHMOND MAYO-SMITH.

Introduction to Public Finance. By CARL C. PLEHN. New York, The Macmillan Co., 1896. — xii, 364 pp.

The first American work covering the whole field of finance cannot fail to be of interest to students of the subject, although it is only a small elementary text-book. One scarcely looks for great originality of thought in a work of this character, but demands only that the result of more elaborate investigations be summed up faithfully and clearly, and combined in a logical order. This is what Professor Plehn has attempted to do; and, so far as the subject admits of condensed or cursory treatment, he has succeeded. The book will doubtless be welcomed by many teachers who feel the need of a text-book of finance more elementary than Bastable.

The general order of treatment is the same as Bastable's. The work is divided into four parts, dealing respectively with public expenditures, public revenues, public indebtedness and financial administration. Perhaps the least satisfactory of these parts is the first. The treatment of expenditure in works on finance is nearly always inadequate; and when it is confined to fifty pages, such a result is perhaps inevitable. Almost no general principles having been as yet developed in this part of the science, a brief treatment of the subject, unless strikingly original, must almost perforce consist chiefly of classification and platitudes. Dr. Plehn has adopted throughout a consistent classification based upon the distinction between common and individual benefit; but he has some difficulty in making certain public expenditures fit into the classification. Assistance of private industry and commerce, for example, is placed under "expenditure exclusively for the common benefit"; and although bounties and "protection" are at first assigned to this head (p. 51), they are treated more at length under "expenditure for the benefit of individuals" (pp. 59 *et seq.*). The confusion arises chiefly, perhaps, from the attempt to classify expenditures according to the ways in which they have been popularly regarded or officially treated, instead of according to the essentially general or special nature of the resulting benefit. Another faulty classification is not so easily explained: if "a charge for a special benefit that exceeds

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the cost is best regarded as consisting of two parts, one a fee, the other a special tax" (p. 78), why is not a surplus-yielding postal charge partly a tax? The character of a tax is denied to it on the wholly irrelevant ground that the postal service is not by nature a public service (p. 270).

In discussing the "benefit" and "faculty" theories of taxation, the author makes a useful distinction between the justification and the measure of taxation. He regards benefit conferred as the justification of taxation, but impracticable as its measure — not primarily because of the difficulty of measuring benefit, though that is not entirely overlooked (p. 114); but because he considers that on the whole "the common benefit is, strictly speaking, equal, while the taxed citizens are unequal in wealth" (p. 83). Some exception may be taken to his statement that benefit is the "universally accepted justification of taxation."

It may puzzle the beginner to discover what Dr. Plehn really thinks of particular kinds of taxes. The income tax, for example, is represented as an ideal in which "the hopes of reformers all center" (p. 232), the practical objections to which apply only to the single progressive income tax proposed by the socialists, and do not militate in the least against its use with other taxes (p. 107); yet in England "the assessment of wages, business profits, and the like, is said to be very lax" (p. 242), while "not even the general excellence of Prussia's administration has been preventive of under-assessment" (p. 157). As for the general property tax, "no words are too strong to express the iniquities of this tax" (p. 219): it falls with undue severity upon the farmer (p. 255), and the experience of all nations shows emphatically that it cannot be made to reach personal property; yet its universal condemnation is "not due to any defects in the tax itself, but mainly to the fact that it is not properly supplemented by other taxes," and so "there may be room for such a tax as a subordinate part of a larger system" (pp. 209, 210). The author has great faith in the inherent virtues of systems.

There are two mutually contradictory accounts of the imperial taxation of the German Empire (pp. 173, 198). A list of the free-trade nations of the world is given in two places (pp. 60, 187), but the author seems not to have heard of the adoption of free trade in New South Wales. He ignores the Australasian colonies altogether, rich as they are in material for the student of finance, and purposely confines his illustrations and historical treatment to the financial systems of England, Germany, France and the United States.

MAX WEST.

WASHINGTON, D.C.

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Finanztheoretische Untersuchungen nebst Darstellung und Kritik des Steuerwesens Schwedens. Von Dr. Knut Wicksell. Jena, 1896. — xiv, 352 pp.

This interesting book comprises three almost entirely distinct parts. The first two of these, which occupy about half the book, are purely theoretical. The third part is historical and critical, and gives a most valuable and interesting outline of the tax system of Sweden. As this is the first systematic treatment of the entire field of taxation in Sweden, it will be read with interest by every student of finance.

Possibly, however, the greatest interest will center in the first of the three parts, which deals with the extremely difficult problem of the incidence of taxation. Dr. Wicksell is an adherent of the so-called Austrian school of economists. He frequently quotes with approval from Walras, Böhm-Bawerk and others, whose work he has previously attempted to expand in a monograph entitled *Ueber Wert, Kapital und Renten* (Jena, 1893). True to the tenets of this school, Dr. Wicksell uses its famous theory of value to solve the problems of tax incidence. The result is certainly interesting, and even brilliant. Even one who fails to see in the so-called "new theory of value" anything more than a clear statement, in technical and unequivocal terms, of the real thought of Adam Smith, and who cannot overcome a suspicion of reasoning that is certainly more "viciously abstract" than that of which Comte complained, will be interested by Dr. Wicksell's clear, logical argument. But the Swedish writer is not so entirely enslaved by his theory and his method as to claim that his conclusions are final. Indeed, he frankly admits that his work is partially intended to serve as a guide or plan for the statistical investigations by which alone the question of incidence can finally be solved.

If there is any one thing to criticise, it is the author's tendency to oversimplify the conditions of the problems with which he deals. For instance, he generally assumes that each of the different taxes which he discusses is actually collected from all of the persons, incomes, commodities or properties upon which it is nominally levied. Thus simplified, the problems of incidence are not difficult to solve, even without the help of the "new key to all economic problems." But how little light such a treatment would throw on the problem, for example, of the incidence of the personal property tax in America!

Dr. Wicksell takes exception to Professor Seligman's analysis of the incidence of a tax upon monopoly products, on the ground that

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the tax may so reduce the net earnings at the old price as to induce the monopolist to raise the price, thus shifting the tax, in part at least. He argues that a higher price, even if it result in a decrease in the sales, may leave a larger net return after the tax has been paid. He also points out that if the tax result in raising the price, it curtails consumption and production, and causes a loss to the community without a corresponding benefit to any one.

The second part of the book deals with a "new principle as to justice in taxation," which is a novel application of the theory of final utility. Justice in taxation is attained, according to the author, when the marginal utility of the particular expenditures for which the tax is collected is greater than that of any other use of the money. That is to say, justice is attained only when a tax is collected which the individual would have paid without compulsion rather than do without the privileges which the payment of the tax ensures him. Practically all this means is that no taxes are just unless the public expenditures are for purposes which really benefit the taxpayers.

Although one may be unable to agree with many of the author's conclusions, it cannot be denied that the book is a scholarly piece of work.

CARL C. PLEHN.

UNIVERSITY OF CALIFORNIA.

The Labour Question in Britain. By PAUL DE ROUSIERS. With a preface by Henri de Tourville. Translated by F. L. D. Herbertson. London and New York, The Macmillan Co., 1896. —393 pp.

La Question Ouvrière en Angleterre. Par PAUL DE ROUSIERS. Avec une préface de Henri de Tourville. Paris, Firmin-Didot, 1885.—532 pp.

Le Trade-Unionisme en Angleterre. Par PAUL DE ROUSIERS, avec la collaboration de MM. de Carbonnel, Festy, Fleury et Wilhelm. Bibliothèque du Musée Social. Paris, Armand Colin & Cie., 1897.—356 pp.

England has long been the chosen land of foreign students in quest of materials and lessons on various phases of economic life. The labor problem especially has been the favorite field of investigation by Germans, Frenchmen, Italians and the rest for the past fifty years. Many admirable works have resulted; but few, if any, have equaled in value or in interest the book by M. de Rousiers, which, a

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few months after its publication in France, appeared in English dress, under the title, *The Labour Question in Britain.*

M. de Rousiers starts out on a novel plan. He recognizes the fact that machinery has revolutionized the industrial system, but he is equally conscious of the further fact that all branches of industry have not advanced to the same point in this evolution. There are important survivals of the old domestic system and small workshop, which must not be neglected in any investigation of the actual problem. M. de Rousiers has, therefore, divided his inquiry into three parts. The first deals with the labor question in small workshops, representing trades of the old type, like the tool-makers, glass-workers, cutlers, typographers, plumbers and others, who are menaced in various degrees by the industrial revolution. In a second class he includes the mining industry, a trade which is organized on the modern system, and which owes its success to scientific methods of business and to international trade on a large scale; but in which the workman himself is still one of the old type, working with about the same tools and in the same way as in former centuries. Part III deals with the trades in which the evolution of the modern factory system has been completed, such as the iron and textile industries.

It will be seen at a glance that this is a new and fruitful way of dealing with the subject. It shows us that there is not a single labor problem, but several problems, according to the conditions which confront the workman. M. de Rousiers, moreover, enhances the value of his treatment by using a kind of family monograph method. He starts in each case with the workman himself — studies him in the workshop and at home, and gives an account of his family life and of the ideals that actuate him. We thus get a series of typical histories, based on original investigation, and presented in a skillful and interesting manner. The dramatic story of the supplanting of the older system by the new one is brought before us in a fresh way, and with an admirable regard for perspective; for M. de Rousiers is an eminently sane man, who is thoroughly alive to the socializing influences of the factory system, without closing his eyes to the evils, which can and will be lopped off.

It would be impossible to mention all the good features of the book. A typical example of the author's mode of treatment may be found in his account of the sweating system. This, as he well shows, is primarily due to the existence of penniless employers — a class brought into existence by the facilities for starting in business that

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are afforded by the modern division of labor and the increase of popular demand. When M. de Rousiers tells us that the sweating system can be ended only by the greater development of machinery, he is stating a fact to the truth of which any one intimately acquainted with the clothing trade in a large city like New York can testify.

Taking it all in all, M. de Rousiers's book contains far and away the best statement of the fundamental conditions of the labor problem in England that has yet been published. It fully deserved the honor accorded to it — that of being crowned by the *Académie des Sciences Morales et Politiques*. There is no other work which gives so vivid and, on the whole, so sane a view of the relations of the modern workman to his industrial environment. And he is to be congratulated for having in Mr. Herbertson so good and careful a translator.

A short time after the appearance of this volume, the *Musée Social* was founded, and M. de Rousiers was sent to England with a band of young men on a mission to make a more detailed study of trade-unionism. The results of this investigation have just appeared in French dress. M. de Rousiers studies the system of collective bargaining in the same way as in the previous volume he studied the laborer himself. He begins with what might be called the antiquated systems, as in the building trades; he next proceeds to the intermediate types, represented by the agricultural laborers, the dockers and the miners; and he finally devotes most of his space to the unions in the shipbuilding, engineering and textile industries. The work is not quite equal to its predecessor, partly, perhaps, because the particular subject has been more exploited in England. But M. de Rousiers will be found instructive by those who do not agree with the analysis of Sidney and Beatrice Webb in their account of the relation between the New Unionism and the Old.

E. R. A. SELIGMAN.

The Theory of the Divine Right of Kings. By J. NEVILLE FIGGIS, Lecturer on History in St. Catharine's College, Cambridge. University Press, 1896. — 304 pp.

This work was the Prince Consort Dissertation for 1892. In a somewhat amplified form it is now published as one of the series of Cambridge Historical Essays. As tracing with much greater detail than has been before attempted the history of that theory which ascribes a sacrosanct character to political authority, the book is a

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distinct contribution to historical science. The author devotes his attention chiefly to the manifestation of this theory in English politics, and within this field he gives evidence of a full acquaintance with the sources as well as with secondary authorities. Upon the continental side, the sketch is extremely meagre; and it would appear that the author has not even made use of those standard works wherein his subject has already been treated. Thus, no reference is made to the works of Gierke, Baudrillart, Eicken or Friedberg, or even Janet. It is probable, however, though not so noted on the titlepage or in the preface, that it was not the purpose of the work to deal, except incidentally, with the history of the theory outside of England.

Within the field particularly covered, the aim of the essay is twofold: first, to determine the content and development of the divine-right theory; and second, to interpret, by its light, the confused and confusing politics of England during the sixteenth and seventeenth centuries. The essential merit of the work consists in the manner in which the first purpose is fulfilled. Not only is the real significance of the theory carefully and fully stated, but its logical relations to such other political dogmas as papal supremacy, legal sovereignty and popular rights are adequately and philosophically explained. An excellent example of the manner in which the author penetrates to the real significance of a particular system as a step in the development of the main theory is exhibited in his treatment of Filmer's *Patriarcha*. Ridiculous as Filmer's theory appears from the modern point of view, it represented a distinct advance in the political thought of the time, and paved the way for still greater developments in the future. This advance consisted in defending the sacred character of kingship, not, as hitherto, chiefly by arguments based upon a medley of scriptural texts, but by the contention that kingship is in consonance with man's nature and with the natural constitution of society — that is, with human nature as formed by the Creator.

> It is an easy transition [says Mr. Figgis] from the conception of government as directly established by divine command to the notion that, since God is the author of nature, whatever is natural has His sanction. Yet the change is great. For direct divine right has been substituted a constructive theory of divine approval. The theological conception of politics is giving way before what may be termed the naturalistic.

The way was thus prepared for Sydney, Locke and Rousseau. "For the whole question of what constitutes the law of nature is involved,

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and it is easy to argue, as did Locke, for the principle of utility — the instinct of self-preservation, as of natural and therefore divine origin."

There is one point made by Mr. Figgis, however, from which I should dissent. He holds that in Filmer's work the conception that existing kings are legitimate descendants of Adam is not an essential element in the argument as to the impiety of resistance to ruling monarchs. But the fact is that it is only the theory of an hereditary right which nothing can defeat or destroy that prevents the divine theory from being made to mean simply the sacred character of any *de facto* ruler, and thus to imply a divine sanction for every successful rebellion. And, of course, no then reigning monarch could claim this absolute hereditary right, except through an unbroken line of royal ancestors running back to primeval time.

The most serious criticism to be made on Mr. Figgis's work, and one which applies throughout the book, is that he tends to become rather the apologist than the historian of the royalist faction which clung to the notion of divine right. This tendency is especially pronounced in his estimate of the motives which led to the maintenance of the theory in England long after the disappearance of that danger of papal domination which has been mainly instrumental in causing its original formulation. Here we find the author paying but little attention to the selfish and despotic ends to which the divine theory was devoted by the English church and crown, or to the resulting oppression of the people; while the utmost stress is laid upon the merit of the theory as affording a basis for preserving the unity of the state in a time of social and political unrest. In this respect the theory doubtless had a certain value, or else its influence would not so long have continued; but that it was a recognition of this value which led to its acceptance by the Royalists and its enunciation as a dogma by the church, cannot be admitted. Nor can we believe, as the author believes, that the benefits were, in the aggregate, greater than the evils which flowed from it. In fine, then, the work, while a valuable contribution to the history of political philosophy, is one to be used with caution so far as regards its interpretation of English history.

JOHNS HOPKINS UNIVERSITY W. W. WILLOUGHBY.

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Government and Parties in Continental Europe. By A. Lawrence Lowell. Boston and New York, Houghton, Mifflin & Co., 1896. — 2 vols.; viii, 377, viii, 455 pp.

This is a much needed book and a book of much merit. The style in which it is written is lucid and attractive, and the substance does not transcend popular comprehension. It is a book for the general reader rather than for the professional student of the subject it treats. The author has evidently had at his command the best modern literature upon the topics brought together in his volumes; and in most cases he has used it with correct appreciation. In a few instances, however, he has, I think, failed to do so — as, for example, when he interprets Professor Goodnow's work on *Comparative Administrative Law* as an argument for the wholesale substitution of Continental for Anglo-Saxon methods and principles.

For the purposes of criticism the contents of Mr. Lowell's book may be distinguished under four heads: First, a brief history of the establishment of the present governmental systems of France, Italy, Germany, Austria and Switzerland; second, an analysis of the governmental structure in each of these several systems; third, a representation of the manner in which these respective governments are operated; and fourth, an account of the constitution, relations and movements of political parties in these states. The historical sketches are, of course, necessarily brief, and should not be too severely criticised for lack of thoroughness. In one or two cases, however, they are too superficial to escape criticism entirely. For example, in the account of the movements of the seventh decade of the century leading to the establishment, first of the North German Union, and then of the German Empire, no mention whatever is made of the memorial of the Prussian ministry of September 15, 1863, which announced that the Prussian government favored the establishment of a national popular chamber in the Confederate Diet; nor of the proposition made by the Prussian government to the Confederate Diet on April 9, 1866, that a plan for the revision of the existing Articles of Confederation be laid before a national popular convention, elected by universal suffrage for deliberation and ratification; nor of the demand made by the Prussian government, June 15, 1866, upon the governments of Saxony, Hanover and Electoral Hesse, that they should demobilize their armies and assent to the summoning of the national popular convention; nor of the manifesto issued by the Prussian government, June 16, 1866, declaring that the unity of the German nation remained after the dissolution of the Confederation,

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and that it was the duty of the governments and of the people to find for that unity a new and vigorous expression. Mr. Lowell thus misses entirely the true spirit of the German revolution of 1866, and falls, consequently, into an excessively particularistic view of the present political system of the German Empire.

The part of the work devoted to the analysis of governmental structure is more satisfactory. In the main it is correct, although it contains many inaccuracies upon minor points. An instance of this kind is to be found on page 297 of the first volume, where the author translates the words of the Prussian constitution, "sonst dauernd verhindert ist, selbst zu regieren," by "insane." Again, in describing the method of amending the Swiss constitution by popular initiative, he says:

> The petitioners can either present their amendment in its final shape, ready to be immediately submitted to popular vote, or they can describe it in general terms. In the latter case, the people must be asked whether they approve of the suggestion, and if they vote yes, the amendment must be drawn up by the existing legislature [vol. ii, p. 191].

In reality the constitution provides that when the petitioners demand an amendment expressed in general terms, the legislature may, *if it approves the same, proceed at once to formulate the amendment and submit it for ratification;* but that if the existing legislature does not approve the same, then the question whether the amendment shall be undertaken or not must be submitted to popular vote, and if the majority of those voting on the question approve, then the existing legislature must proceed. Such a lack of exactness may be pardoned, perhaps, in a popular work, but it makes the work rather an unsafe guide for professional students.

In those parts of the treatise devoted to the working of governments and to the constitutions, creeds and movements of parties, the author is at his best. In regard to these matters he has made a very important contribution to the literature of political science, and has placed all students of that science under obligations which no one of them should hesitate to recognize.

Finally, a general criticism to be made upon the book is that it lacks any consistent and scientific nomenclature. To the ordinary reader the indiscriminate use of terms must be exceedingly confusing. The significant titles of political science, namely, sovereignty, state, government, rights and liberty, are each employed in more than one sense, sometimes even in connection with a single topic. A professional political scientist would be able, perhaps, to distinguish

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the different meanings by the connections, but the untrained reader will fail to gain all of the profit which he might otherwise win from this, in many respects, excellent treatise.

J. W. BURGESS.

A History of Political Parties in the United States. Vol. I. By J. P. GORDY, Ph.D., Professor of Pedagogy in Ohio University. Athens, Ohio, 1895. — 512 pp.

In order rightly to consider this book it must be kept in mind that the author, himself a teacher of pedagogy, designs it primarily for teachers who have not had the advantages of higher education and for business men. It is in no sense an original historical investigation into party origins and party organization and development. In this respect the title and the extensive plan of the work create expectations that will not be fulfilled. There is certainly room for a three-volume study of the history of political parties in the United States. Such a work should be definitely devoted to the institutional history of political parties and to the main lines of party action, as well as to the personality and influence of party leaders. It should be based upon extensive historical investigation and well-defined power of political analysis. The author should explore the political history of the various colonies for evidence of party divisions in each. He should investigate the geographical and social distribution of these colonial party divisions with a view to disclosing intercolonial areas or classes with common political sympathies, affording material for fusion into parties on a national scale. This evolution of national parties should be traced through the period of the Revolution and the Confederation. Until this historical foundation is exposed, no well-grounded history of parties in this country can be written. Nor can later party history be rightly presented without more attention to the history of party politics in the various states, to the sectional groupings revealed in congressional votes and presidential elections, and to the formation of the machinery of party action. In brief, a scientific history of political parties must find its basis in demographic facts, and must include a study of the evolution of the organs of party action. The general political history of the nation affects this development of parties, and parties contribute powerfully to the political history of the nation; but it is an error to think that party history and political history are identical.

This is the mistake made by the author of the work before us. The volume is, in fact, a compendium of the political history of the United

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States from 1781 to the close of Jefferson's administration. The author has real pedagogical power, and presents the results of his historical reading in a clear and instructive way, but without particular originality in his views or power of literary expression. The chapters dealing with the period of Jefferson's presidency, for example, derive what is valuable in them from the work of Henry Adams. If, as Mr. Gordy implies, the teacher of American history is to be for the most part self-taught, and is not likely to use such extensive works as that of Mr. Adams, it is certainly fortunate that he has no worse a compendium than this to fall back on. But one may question whether a teacher of this description will accomplish much for the cause of American history in any case.

On the whole, the judgments of the author are well based; while some of his work is particularly effective. His defense of Madison's consistency in deserting the Federalists for the Republicans is well presented; as is also his analysis of the sources of Hamilton's strength and weakness.

On the other hand, he gives his reader no adequate information respecting concrete facts of the economic and social life of the American people, so important to enable us to understand this formative period in party history. There is disproportionate attention paid to the utterances of political leaders and to the analysis of their motives. The attitude of the political scientist sometimes dominates that of the historian. This is illustrated by Mr. Gordy's contention that the congress of the Confederation was not a government; and by this interesting observation: "The Convention framed a constitution by the adoption of which thirteen peoples, imagining themselves independent and sovereign, really acknowledged themselves to be but parts of a single political whole. But they did it unconsciously." His assertion that the Anti-Federalists were not a sectional party fails to recognize that there are other sections besides the North and South. He notes Maclay's use of the word "Republican" as a party epithet without, it would seem, knowing that it was not uncommon in state usage before that. A tendency to absoluteness of statement when the facts do not justify it may also be noted, as when he declares that "with any other man as president, he [Genet] would in all probability have succeeded" in overthrowing the constituted authorities in favor of the revolution.

With the author's purpose in mind, one may say that, on the whole, he has performed his task with much success.

UNIVERSITY OF WISCONSIN. FREDERICK J. TURNER.

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History of the Impeachment of Andrew Johnson, President of the United States. By EDMUND G. ROSS. Santa Fé, New Mexican Printing Co., 1896. — 180 pp.

Those of the generation which has come to manhood since the era of Reconstruction find it exceedingly difficult to realize the intensity of party feeling which was expressed in the attacks on President Johnson. The great majority of those who demanded Johnson's impeachment were firmly convinced that, if circumstances should ever permit, the South would be ready to resume its former attitude upon the slavery question, and that Johnson was deliberately endeavoring to assist the South to a position where it could defy the North. Such a president, they reasoned, had forfeited all his claims to confidence, and should speedily be removed from a position where he might work so much injury. There was an honest belief in an undoubted majority of the Republican Party, that the safety of the United States demanded Johnson's conviction.

The Republicans in the Senate, however, were by no means a unit in their attitude towards the impeachment. They represented many shades of opinion; but their majority was so overwhelming that party discipline was confidently counted upon to secure a two-thirds majority for conviction. Yet in spite of all kinds of pressure, abuse, attempted coercion, and even, it was rumored, contemplated assassination, seven of the forty-two Republican senators voted "not guilty." These men knew that they were committing political suicide — that by their home constituencies they would be considered traitors even more odious than the much-reviled Copperheads; but, on the other hand, they clearly perceived the dangers that were involved in conviction, and they appreciated the fact that partisan fury, not judicial fairness, was determining the action of their colleagues. As more light is thrown upon the subject, it will become more and more evident that the incident is not one to which our historians can point with pride. Many excuses can be made for the morbid state of public feeling, but we shall scarcely be able to excuse those leaders of the Republican party in the Senate who lost sight of their judicial character, conducted themselves with notorious lack of dignity, and became violent partisans.

In the introductory chapters Senator Ross shows why the Republican Party, coming to power under exceptional circumstances and having a peculiar mission to fulfill during the war, was poorly equipped for the work of restoration. Lincoln clearly saw the necessities of

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the case, and with his great reputation would have been able, Senator Ross believes, to draw to him the majority of his party. His assassination, however, put an end to such possibilities. Passions which had scarcely been governed before then became doubly intense; and Johnson, with his impetuous, headstrong nature, was utterly unfitted for the position which now imposed such unusual duties.

After tracing briefly the Lincoln and Johnson plans of restoration, and showing that Johnson was consistently following the path laid out by his predecessor, Senator Ross proceeds to a discussion of the impeachment charges. He might have added somewhat to the effectiveness of the book if he had shown more clearly the extreme tactlessness of President Johnson's public speeches during 1866, and its effect in alienating many who might otherwise have been his supporters. In discussing Johnson's career too much emphasis can scarcely be placed upon his peculiar personality, and upon his utter failure to realize the limitations which his office placed upon him.

The special value of the main chapters of the book — those devoted to the discussion of the trial — consists in the light which is thrown upon the motives of many senators, and upon the total lack of scruples as to the means employed to secure conviction. Deliberate attempts were made to corrupt those whom party discipline failed to control, and no stone was left unturned in the effort to secure the necessary majority. The weakness of the testimony brought against Johnson is clearly shown, and lengthy citations from the stenographic report of the examination of witnesses are introduced into the text. To the special student this selected evidence is of great convenience.

In his effort to make his work perfectly accurate, Senator Ross has, however, quoted from the official report of the trial so freely that the literary qualities of the book are seriously impaired. The average reader will be strongly tempted to omit many of the lengthy citations, and will therefore lose many of the most significant and important facts, which could have been clearly set forth in much less space. For the student who desires a convenient handbook of the proceedings, which will also supply information that otherwise must be obtained from government reports, the book will have genuine value.

Moreover, all writers discussing the questions involved in Reconstruction will find in portions of this monograph valuable aid.

CHARLES ERNEST CHADSEY.

DURANGO, COLORADO.

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The Trent Affair, including a Review of English and American Relations at the Beginning of the Civil War. By THOMAS L. HARRIS, A.M. Indianapolis and Kansas City, The Bowen-Merrill Company, 1896. — 288 pp.

In prefacing his account of the *Trent* affair with a review of Anglo-American relations at the beginning of the Civil War in the United States, the author's purpose may be assumed to have been to place the principal topic in a proper historical perspective. It is therefore somewhat disappointing to find in his narrative various statements into which he seems to have been betrayed by a feeling of resentment. For example, he declares that, "with rare exceptions, the press, the people and the government [of Great Britain] were heart and soul with the South in its efforts for the dismemberment of the American commonwealth." This is a very sweeping assertion. It may be quite true that Lord Palmerston's course in the case of the *Trent* is open to grave censure, and it may be equally true that other acts of the British government during the Civil War afforded just cause of complaint; but in attempting to indict a whole people and its government, it is proper to exercise circumspection. The author's feelings have not always permitted him to do so.

He devotes a chapter to "The Question of Confederate Independence," and concludes it with the declaration that nothing but the thought that it was "inexpedient," and "perhaps not quite safe," "prevented an early recognition [of the independence] of the Confederacy by England." His proofs of this are (1) that British sympathy was with the Confederacy; (2) that Earl Russell said in April, 1861, that the matter was "not ripe for decision one way or the other"; and (3) that "efforts" were made in England "to have the independence of the Confederacy immediately recognized." It is obvious that of these proofs the last is the only one that promises anything tangible. But the only "effort" mentioned is the action of Mr. Gregory, a member of Parliament, who, early in 1861, gave notice in the Commons of a motion looking to the recognition of Confederate independence, and published a letter in the London *Times* in support of it. In reality Mr. Gregory's motion was, as we are told, "finally postponed indefinitely." But we are assured that this was done "because the Commons thought it inexpedient to act upon it at that time." Perhaps so; perhaps not. Since we are reduced, however, to mere assumption, it might be fair to admit that the action of the Commons may have been to some extent influenced

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by the circumstance that the independence of the Confederacy was not actually established.

In treating of the Queen's proclamation of neutrality of May 13, 1861, by which the Confederate states were recognized as a belligerent, the author declares that, if the views he has expressed of the case be correct, "there can be no defense whatever for the action of the British government"; and that it "must," in the opinion of "every unprejudiced mind," "ever be classed with the long catalogue of unjust acts and international wrongs for which England has been noted in her relations with weaker nations or with stronger countries in distress." It therefore becomes material to inquire what are the author's "views of the case." Briefly stated, he holds that the recognition of Confederate belligerency, if it had been extended after August 1, 1861, would have been "entirely in accordance with the principles of strict fairness and neutrality." His reason for this statement is, that the war was in the beginning "only a personal war, an effort on the part of the Federal government to suppress rebellion on the part of individuals;" and that a state of war, in the international sense, "did not exist until after President Lincoln's proclamation to that effect, issued August 16, 1861, in pursuance of the act of Congress of July 13, 1861." The Supreme Court of the United States has held precisely the reverse. In the Prize Cases (2 Black, 635), involving two vessels that were seized in May, 1861, that tribunal declared that the "proclamation of blockade [issued in April, 1861] is itself official and conclusive evidence that a state of war existed," and that in "organizing" the rebellion the insurgents "acted as states." There is thus ample room for a different view of the law from that expressed by the author, whatever may be thought of the lack of consideration for the United States government shown in the particular manner in which the Queen's proclamation was issued.

As to the case of the *Trent* itself, Mr. Harris maintains that the seizure of Mason and Slidell by Captain Wilkes was wrong in point of law; and he thinks that Mr. Seward should have placed the release of the captives on a broader ground than that of the omission of the captor to bring the vessel into port. His argument on this point is clear and forcible, and well worthy of consideration.

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The Province of Quebec and the Early American Revolution. A Study in English-American Colonial History. By VICTOR COFFIN, Ph.D., Assistant Professor of European History in the University of Wisconsin. Bulletin of the University of Wisconsin, Economics, Political Science and History Series, Vol. I, No. 3, Madison, Wis., 1896. — xvii, 288 pp.

The specific subject of this monograph is the Quebec Act of 1774, its origin and its immediate and ultimate results. This is a topic which till now has scarcely received adequate attention. Opinions concerning it which were based on hearsay, or adopted after insufficient investigation, have passed for history. It does not lie directly in the path of the historian of the American Revolution, and hence has been slurred over. The romantic period of Canadian history, to which Parkman and most of the Catholic historians exclusively devoted themselves, had passed before the Quebec Act became law. It was a statute, too, which had manifold bearings and which, to be understood, demands study from several points of view. Only within recent years have the materials for such an investigation been placed within the easy reach of American students, and that breadth of view attained which makes it possible to use such materials properly. Professor Coffin has studied the sources with great thoroughness, and has made strong and independent use of the material which they afford. As a specimen of historical reasoning, of the proper marshalling of evidence, this work merits high praise.

The argument of the author is briefly as follows: During the interval between the establishment of English government in Canada under the proclamation of October, 1763 and the passage of the Quebec Act, the governors took the French *noblesse* under their protection; and, believing that the peasantry was largely under the influence of this class, they insisted that the granting of favors to it and the maintenance, so far as possible, of the system of French law intact, was the safe course of policy to be pursued. Of this they convinced the home government, at the same time prejudicing it against the English-speaking element of the population, which, though small, had protested against the performance of jury service by Catholics, and against the collection of the old French customs duties without distinct appropriation by an assembly, and which had, moreover, insisted upon the establishment of a legislature. The officials of the home government, though meaning to be just and humane, were not qualified to deal with the situation intelligently, and accordingly they acted upon

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the representations of the governors as if they had been true. But in the belief of the author the *noblesse* really possessed little influence over the peasantry. The chief desires of the peasantry were to get free from the judicial control of the seigneurs, and also from the compulsory obligation to pay tithes to the priesthood. Could these favors have been secured, the peasants would have submitted to the English system of law without a murmur. Their natural political leaders, the officials and merchants, had mostly returned to France, while the clergy were quiescent. Hence the opportunity was favorable for introducing English law at once into the province, and subjecting the French to its influence. But this was not done. Instead, as one of the favors extended to the Catholics in the Quebec Act, the system of compulsory tithes was restored, while, owing to the retention of the French land law, the peasants were led to fear the return of the oppressive conditions of the feudal *régime*.

The English residents, deeply disappointed because the act contained no provision for an assembly, at once sought to arouse the discontent of the French. In this they were quite successful, and hence it was that when, in 1775, the revolting colonists from the south invaded Canada, they found there widespread opposition to the English government. The author sees in this fact little evidence of sympathy with the cause of the invaders, but rather a strong proof of dissatisfaction with the Quebec Act. Within a year, however, the outrages committed by the undisciplined invaders so far reconciled the inhabitants to English rule, that they could not be tempted to turn against it even after the alliance between France and the revolting colonies had been formed. Though the author finds no evidence that the English government, in the passage of the Quebec Act, was moved by sinister intent toward the other colonies, he sees how natural it was that the colonists should interpret the measure unfavorably. In his criticism of the act he goes still further, and holds that by perpetuating French institutions in Lower Canada, it has been a serious obstacle to the growth of political unity. It is his belief that the proper course for the government to have pursued at the outset was to set the province "firmly and definitely upon an English instead of a French path of development."

Not the least interesting part of the monograph is the passage in which Professor Coffin, adopting fully the view advanced by Lord Mansfield in Campbell *vs.* Hall, argues that all the legislative ordinances issued by the Canadian government from 1763 to 1774 were illegal. Lareau reaches practically the same conclusion, though by a

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different path. Apparently, however, some of the ordinances to which Professor Coffin refers (p. 341) were administrative rather than legislative in character. If so, their issue was legal, and can be justified by reference to the commissions and instructions of governors in other royal provinces in America, where English law existed and assemblies had long been established.

HERBERT L. OSGOOD.

Select Cases from the Coroner's Rolls, A.D. 1215–1413, with a Brief Account of the History of the Office of Coroner. Edited for the Selden Society by CHARLES GROSS, PH.D., Assistant Professor of History at Harvard University. London, 1895. — xliv, 159 pp.

Dr. Gross has not edited the original *rotuli coronatorum*, but rather some contemporary or almost contemporary transcripts and abstracts therefrom. The originals, drawn up by the coroners for the use of the itinerant justices, seem to have been destroyed or lost, while the abstracts have been preserved. From these rolls and from the other material which he has so diligently exploited, Dr. Gross has — by exercising the same skill and accuracy that he displayed in connection with his work on the merchant gild — been able to describe the coroner of the thirteenth and fourteenth centuries. He has thrown a flood of light upon local legal institutions of the time of John, Henry III and Edward I; and has produced a work which cannot be characterized better than by saying that it maintains the high standard hitherto set by the publications of the Selden Society and hitherto attained in all the work that Dr. Gross has done.

The essay introducing the text of the rolls is an expansion of the article on the coroner printed by Dr. Gross in the POLITICAL SCIENCE QUARTERLY for 1892 (vol. vi, p. 656). It contains a number of important changes in detail, but none whatever in the conclusions regarding the importance of the coroner in English constitutional history as a link between the itinerant justices and the local administration — between the manorial and royal jurisdictions. There are a few omissions, but so much new material is added that the essay is nearly doubled in length. The printed extracts which follow date from 1215 to 1413, and relate to some seventeen of the English counties, chiefly in the center and north. Accompanying the texts are translations, admirable for their clearness and excellent literary form. A glossary and various indices complete the volume.

Attention is naturally first attracted to the friendly controversy

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between Dr. Gross and Professor Maitland, in which the latter took exception to Dr. Gross's statement that the chapter (20) of the Articles of the Eyre of 1194, to which has usually been traced the institution of the coroner's office, was simply a declaratory act. Dr. Gross had quoted from the charters granted to London before 1135 and to Colchester in 1189 to prove the existence of persons not only guarding the pleas of the crown but also holding them. Professor Maitland replied that such a person was a *justiciarius* and not a *coronator;* that the coroner owed his existence to the separation of the duty of guarding the pleas from that of holding them; and that, unless Dr. Gross could find before 1194 an officer who guarded the pleas but did not hold them, he must still regard the article of 1194 as an originating act. As a study of the texts discloses no such officer, Dr. Gross now answers that the famous clause (24) of Magna Carta, which denies to coroners the right to hold the pleas of the crown, implies that before 1215 coroners had been accustomed to hold as well as to guard — else why forbid them to hold after 1215? He further defends his conclusion by referring to traces of judicial functions found in the later history of the coroner, when that officer had become only the custodian of the pleas. The question is important, for Dr. Gross ascribes to the early coroner more importance than Professor Maitland will allow.

The description that Dr. Gross gives of the functions of the coroner, and of the procedure before and at the inquest, can be supplemented at every point by reference to the rolls themselves. It is unnecessary to follow here the various steps from the finding of the body to the final presentation of the case to the royal justices. A word may, however, be said regarding the composition of the coroner's jury; for it has been through a study of the work of this body that Dr. Gross has been enabled to make a suggestive addition to the history of trial by jury. We know from the rolls, as well as from the law writers, that the coroner's jury consisted of two distinct parts: the twelve *juratores* of the hundred, and the reeve and four men from each of the four vills — that in which the death occurred and the three next adjoining. The twelve, taking oath, testified as to whether the deed were a felony or a misadventure, giving such detail as seemed necessary in order to make the matter clear to the coroner. Then the "four vills" bore witness, generally, though not always, agreeing with the twelve. It would seem that the statement of the villagers was generally regarded as the more important, on account of their acquaintance with the circumstances of the death.

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What has this to do with the origin of the petty jury? Final conclusions are, of course, not to be had until masses of unprinted records are examined. Something may, however, be said. At the coroner's inquest the jurors did no more than give evidence, though on their oath a man might have been arrested and put in jail: they did not try the man, because the coroner merely guarded the pleas and did not hold them. Then the twelve jurors of each of the hundreds in the county went up to the court of the itinerant justices. There they acted not merely as a jury of presentment but also as a trial jury. The twenty villagers from each group of vills likewise went up. In Henry III's time the custom was to submit the question of guilt or innocence first to the presenting jury. If this jury found the accused guilty, then the villagers were sworn; and if they too found him guilty, then sentence was passed. But as it seemed unfair to the accused that the indicting jury should also give the final verdict, — whether it was so or not is another question, — it evidently had become the practice by the end of Henry III's reign for the justices, before passing sentence, to turn to a second hundred jury for an opinion. The result of this was that in time it became a right of the accused to demand the opinion of a second jury before sentence was given. During the reign of Edward I the practice of swearing the "four vills" seems to have been abandoned. It has been a question whether the second hundred jury or the "four vills" is to be considered the germ of the modern petty jury. At present the evidence seems to point to the former, but Dr. Gross contends that the custom of employing a second jury to traverse the judgment of the hundred jury apparently began with those cases — appeals of felony — in which the "four vills" were asked to give their testimony. The fact that the vills were asked to give testimony in such cases, and that their declaration was generally accepted by the court as a decisive verdict was probably due, says Dr. Gross, to the belief that the villagers were more familiar than any one else with the felony in question, because they had already "made a careful investigation of the offense in connection with the coroner's inquest." Thus we may well believe that the work of the "four vills" was "at least a stage in the development of procedure which the future historian of trial by jury cannot safely ignore."

Among other interesting subjects touched upon in the text of the rolls and referred to in the introduction may be mentioned the following: the right of a woman to prosecute an appeal (pp. 65, 71, 72, 77) under the limitation imposed by chapter 54 of Magna Carta, to

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which reference is made on page 35; the custom of abjuring the realm (*abjuratio regni*), of which the rolls give some excellent examples (pp. 37, 69, 76); responsibility for harboring strangers, which looks back to Anglo-Saxon law (pp. 74, 77); proceedings on appeal before the county court, of which many interesting instances are given (pp. 19, 20, 22, 23, 26, 34–35, 62–63, 65, *etc.*); writs to the sheriff authorizing appeal to the justices from the county court, *quia appellum predictum in minori curia quam coram justiciariis nostris terminari non potest per legem et consuetudinem regni nostri* (p. 72).

The study of the coroner and his jury naturally suggests inquiry as to the status of the persons composing the jury. Dr. Gross says: "The twelve of the hundred seem to have been freeholders; the men of the vills were *villani*"; but he does not tell us anything of the manner in which they were selected for service at the inquest. So far as I have observed, the cartularies do not mention the obligation to be present at the coroner's inquest. In default, then, of definite information, I should conjecture that the inquest was attended by the same men who owed suit at the hundred and county courts. We know that the inquest jurors from the "four vills" went up to the court of the justices. In the Ramsey cartulary we are clearly told who went up to the eyre courts:

Et unum de homagio ipsius [a freeholder] respondeat in omnibus cum villata coram justiciariis [I, 283].

Item idem [a freeholder] tenet ij virgatas et defendit pro eis villatam ad comitatum et hundredum et ad summonitionem justiciarorum erit loco prepositi [I, 382].

Ad ecclesiam pertinent v virgatae terrae. Pro quibus persona debet esse quartus homo coram justiciis cum custamento suo [III, 307].

In these cases the vill was acquitted, not by persons as such, but by holders of certain lands upon which the burden of suit fell. Such lands might be in the hands of freeholders as well as of villeins, as was the case in the second extract quoted. Apparently the persons mentioned in the quotations were not of the hundred jury, because they defended the *villata* and not the hundred. On this point the references to the reeve and the *quartus homo* seem to be conclusive. From this I should infer that the obligation to serve on the coroner's jury of the "four vills" fell upon those holding virgates that owed suit at the higher courts; and, furthermore, that, although the reeve was always a villein and the majority of the other members were generally of that class, the jury not infrequently contained small freeholders.

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The Development of the French Monarchy under Louis VI. By JAMES WESTFALL THOMPSON, A.B. University of Chicago, 1895.— xii, 113 pp.

This monograph was the author's doctoral dissertation at the University of Chicago. Like all other investigations in the field of mediæval European history by American students forced to rely upon the material accessible here, it was conducted under great difficulties. Mr. Thompson deserves praise for his careful study of this material; but, as was to be expected, Luchaire had left little for him to glean. This monograph adds nothing to our knowledge of the subject; yet, with the exception of Walker's notable dissertation on *Philip Augustus*, it is the only work of any value in the English language on the history of the French state during the later Middle Ages. It is true that in some instances Mr. Thompson advances new propositions; but in all cases, as it seems to us, these have no scientific basis. He has not avoided the snare that lies in wait for every investigator of a special period — the tendency to overestimate the relative importance of the subject treated. Mr. Thompson has a decided tendency to attribute to Louis VI many advances in the royal power that took place in the next century.

One instance of this tendency is his attribution to Louis VI of that great innovation in feudal law, by which appeals ran to the king's court. Mr. Thompson's account of the appellate jurisdiction of the royal court in the time of Louis VI is very misleading. He says (p. 39):

> The practice of appeal as instituted by Louis VI was an entire interpolation in the feudal law of the land. . . . Hitherto the dukes of Normandy and Aquitaine, the counts of Brittany, Flanders, Champagne and Toulouse had enjoyed the privilege of final decision.

The unwary reader is thus led to infer that this privilege ceased in the reign of Louis VI. This, however, is by no means true. In fact, the *curia regis* of Louis VI had absolutely no appellate jurisdiction, except in certain cases when it reversed the decision rendered by the court of an ecclesiastical vassal.[1] This was so because of the close relations always existing between church and crown, and because the king appointed these bishops and abbots. For instance, in the case of the appeal of the bishop of Arras, which Mr. Thompson cites to support his assertion, Louis had a direct interest in interfering, be-

[1] *Cf.* Luchaire, Institutions Monarchiques, I, 301, and Manuel, p. 556; Langlois, Philippe III, p. 276.

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cause, as he says, "*advocati et patroni Atrebatensis sumus ecclesie.*"[1] The only other case that Mr. Thompson cites is that of some nobles who complained of the tyranny of their lord, Humbaud of Sainte-Sévère, and begged Louis "*aut ad exequendum justiciam cogere, aut jure pro injuria castrum lege salica amittere.*"[2] In this there is absolutely no trace of appellate jurisdiction: possibly it might be construed as an instance of the feudally legal interference of the suzerain in the case of *defectus justitiae*, but that has only a superficial resemblance to appellate jurisdiction.

Then Mr. Thompson claims (p. 57) that in 1137 Louis instituted a general tax, not feudal in nature, the first levied by any Capetian. This assertion is based on a passage from the *Chronicon Morigniacensis monasterii*, relating Louis VI's preparations for the marriage of his son to Eleanor of Aquitaine. It reads: "*Imperialis itaque edicti taxatione ubique publicata, militum agmina non parva properanter conveniunt. . . .*"[3] Mr. Thompson translates *taxatio* as taxation. From the context, however, this rendering seems to us not legitimate. *Taxatio* is evidently used here in the sense of *aestimatio*, that is, estimate of the *talia* or number of men the vassals and subjects were bound to furnish for the marital expedition. It is true that, so far as we know, there is no other instance of the use of *taxatio* in exactly this sense; but, on the other hand, its synonym, *taxa*, in the phrase *taxa gentium*, was used as the equivalent of *talia*.[4] Even admitting the correctness of Mr. Thompson's version of this passage, it seems at any rate a poor foundation on which to make so dogmatic and revolutionary a statement. In the first place, no manuscript copy of this chronicle is extant,[5] and consequently we cannot tell how much has been interpolated in later years. Then Suger, who was the king's chief adviser, would surely have mentioned so novel a step in his *Life of Louis VI.* We find, however, that Suger's account[6] makes no mention of it, and that his version agrees with our interpretation of the passage given above.

Mr. Thompson has an unfortunate tendency to make dogmatic assertions in the text, and then to qualify them in the notes. For instance, he asserts in the text that Louis VI first enunciated the

[1] Langlois, Textes relatifs à l'Histoire du Parlement, p. 12; Recueil des Historiens des Gaules et de la France, XV, 342 n.

[2] Sugeri Vita Lud. Crassi, ed. Molinier, pp. 36, 37, 137, 138.

[3] Recueil des Historiens, XII, 83.

[4] See Du Cange, "taxa" and "talia."

[5] Potthast's Bibliotheca Historica, I, 279.

[6] Ed. Molinier, p. 128.

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doctrine that the king *ipso facto* can render homage to no one, though this honor has usually been assigned to Philip Augustus.[1] This contention is based on a passage from one of Suger's works,[2] the genuineness of which, as Mr. Thompson himself admits in the notes, has been very much disputed. Consequently, this passage is no scientific basis for so positive an assertion.

Exception can also be taken to Mr. Thompson's definition of liege-homage, and to his statement that Louis VI instituted this peculiar form of homage. Then, again, Mr. Thompson criticises Lothair (p. 3) with undue severity for attempting to recover Lotharingia. In reality it was a very statesmanlike act on the part of Lothair, for he needed some territorial basis to neutralize the preponderating power of the Capetians.[3]

Thus, though his monograph contains much that is sound and valuable, it should be used with caution by one not acquainted with French mediæval history. In spite of the opinion we have of Mr. Thompson's method of using the sources, his careful study of them leads us to expect better work from his pen when he has overcome his enthusiasm for novelties.

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[1] Brussel, Usage des Fiefs, I, 152; Walker, Philip-Augustus, p. 9.

[2] Recueil des Historiens, XII, 50 n.

[3] *Cf.* Monod, Annuaire de l'École Pratique des Hautes Études, 1896, p. 15.

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BOOK NOTES.

In a prefatory note to *International Law: a Simple Statement of its Principles* (New York, G. P. Putnam's Sons, 1896), the author, Mr. Herbert Wolcott Bowen, says that the work is "to a great degree but an amplification of notes taken on treaties, municipal laws and the works of publicists, especially Wheaton, Woolsey and Wharton." This candid, modest statement indicates the character and scope of the work, besides disclosing on the part of the author, who is a consular officer of the United States, a commendable employment of his spare moments. There is nothing, however, that requires a more comprehensive knowledge of a science than the making of a concise statement of its principles; and this requirement is not lessened by the attempt to blend the views of other writers. Many of Mr. Bowen's statements of principle are sufficiently accurate; but some of them he would on further investigation probably desire to modify. Of the latter we may cite as an example the section on domicil (s. 143), in which it is stated that the native-born and naturalized citizens of a country, and "persons that have their domicil therein," are "entitled to claim the protection of the nation both at home and abroad, and international law gives them the same nationality." If this be so, what is the meaning of our naturalization treaties? And why is it that the statutes of the United States do not authorize the issuance of, and that the Department of State refuses to issue, passports to merely domiciled inhabitants of the United States? The statement in question is obviously based on the passage from Marcy's Koszta note, given in Wharton's *Digest*, s. 198 — a passage which, being torn from the context, presents, like many other passages in the same work, an utterly insufficient and misleading view of the case to which it relates, and of what was actually maintained in it.

Mr. F. J. Stimson has followed his *Labor in its Relation to Law* (which was noticed in this Quarterly, vol. xi, p. 196) by a bulkier work entitled *Handbook to the Labor Law of the United States* (Scribners, 1896). This is a readable and successful attempt to set forth the law of labor disputes, and the methods of regulating industrial affairs and protecting employees. It rests on a careful collation, not only of the commonwealth statutes, but of the numerous court decisions on each branch of the subject. It is not only a handbook, but a handy book, and meets an undoubted want.

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Under the title *La Funzione pratica della Filosofia del Diritto, considerata in sè ed in rapporto al Socialismo contemporaneo* (Bologna, Zanichelli), Sig. Icilio Vanni reprints the first of a series of lectures upon legal philosophy delivered by him in 1894 at the University of Bologna. The philosophy of law, he contends, is not a branch of jurisprudence; its task is not to set forth in systematic form the most general and abstract principles of law; it is a branch of philosophy, and its function is to consider law "in its relation to life, to its needs and its ends." Such a consideration is practically forced upon modern society by the socialistic criticism of existing law; and to the examination of socialistic theories Sig. Vanni devotes a large part of his pamphlet. The premises on which these theories are based are, as he shows, individualistic, consisting in assumptions regarding "natural rights"; but the realization of the socialistic program would involve the suppression of individualism and "a return to that social state in which the individual belongs to the community as its mere organ, deprived of independence, of free will, of personal liberty." With the substance and tendency of Sig. Vanni's legal philosophy we have no quarrel; but from the point of view of system and nomenclature it would be of interest to learn how he distinguishes philosophy from sociology.

A clear and convenient critical summary of many different views will be found in *Théories Modernes sur les Origines de la Famille, de la Société et de l'État*, by Adolphe Posada, professor of public law in the University of Oviedo. The Spanish original was published at Madrid in 1892, and the present translation is included in the Bibliothèque Sociologique Internationale (Paris, V. Giard et E. Brière). No other book that we have seen presents so compactly and on the whole so well the theories of the original writers on social origins. The reader who takes up these questions for the first time will find here the gist of the arguments and conclusions of Maine, Morgan, McLennan, Bachofen, Girard-Tenlon, Lubbock, Spencer, Letourneau, Dargun, Post, Starcke, Jhering and Westermarck. Dr. Posada thinks independently; his criticisms are able and his own conclusions are judicial. He does not admit that primitive society was a primitive family only: it was also, he believes, a primitive state.

An interesting analysis of the concepts "society," "state," "law" and "government," an examination of the relations of the state to society, and some sound conclusions upon the relations of law and political science to sociology, are contained in *L'État comme Organisation Coercitative de la Société Politique*, by Sigismond Balicki (Paris,

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Giard et Brière). The dominating thought in Dr. Balicki's study of these topics is a conception of society as the spontaneous or voluntary organization of men living in communities, and of the state as a coercive organization of the same associated men by a dominant group. He accordingly regards sociology as the general social science, and public law and the theory of the state as special social sciences; and he would require a preliminary study of sociology as a preparation for the study of law. In the bibliography at the end of the volume there is no mention of Burgess, towards whose analysis of sovereignty and liberty Dr. Balicki seems to have been independently, but rather haltingly, feeling his way.

A much needed history of anarchism has appeared, by E. V. Zenker, under the title of *Der Anarchismus: Kritik und Geschichte der Anarchistischen Theorie* (Jena, Fischer, 1895). The first part deals with the older anarchists, especially Proudhon and Stirner, with their followers; a second part treats of the modern movement. Here, of course, the Russians gave the impetus; and accordingly, considerable space is devoted to Bakunin, Kropotkin and his followers. Of the other countries, France is treated most fully with Réclus, Grave, Saurin, Michel, Hamon, Malato and the rest; while Italy, Germany, England and America are handled more briefly. Unfortunately, the author could procure none of Tucker's publications, and the account of American anarchism is therefore very fragmentary. Warren, Andrews and Spooner are barely mentioned. The third and concluding part deals with more familiar material — the recent political fortunes of practical anarchism. In the appendix is printed a German translation of Proudhon's *Political Catechism.*

Several years ago, Mr. Josef Stammhammer announced his intention of publishing a series of bibliographies on the various divisions of political economy. His *Bibliographie des Sozialismus und des Communismus* appeared in 1893, and was noticed in this QUARTERLY, vol. ix, p. 182. This is now followed by the second volume of the series, entitled *Bibliographie der Social-Politik* (Jena, Fischer), which is the counterpart of its predecessor in form, arrangement and general appearance, differing only in its greater bulk — 648 pages. The subject-index occupies seventy pages, and is admirably arranged to facilitate reference. The English and American scientific periodicals appear to have been thoroughly exploited. The succeeding volumes on finance, on practical political economy and on economic theory will be awaited with impatience.

The Clarendon Press has again earned the gratitude of scholars

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by its new edition of the *Utopia* of Sir Thomas More (Macmillan). Mr. J. H. Lupton, the editor, furnishes an interesting introduction, giving an account of More's early life, of the circumstances that gave rise to the *Utopia* and of the framework of the story, and concluding with a comparison of the *Utopia* with other ideal commonwealths. The chief value of the edition, however, lies in the facts that both the Latin original and the English translation are given page by page, and that a series of annotations, occupying about a third of the whole book, is added. The work contains the well-known letters of Erasmus, of Bude and of Giles, and closes with a glossary and an index. It deserves to become the standard edition of this famous classic.

Schäffle's great work on the *Bau und Leben des socialen Körpers*, which was originally published in four large volumes in 1875–78, has been compressed in the second edition (Tübingen, H. Laupp) into two volumes. There has been little actual condensation, however; and by means of smaller type and a larger page the two new volumes are made to hold about as much as the original four. In its intellectual substance also the work is substantially unchanged. Dr. Schäffle has not greatly modified his description of society in terms of a minutely drawn biological analogy.

The second congress of the Institut International de Sociologie, held at Paris in September and October, 1895, brought out a large number of important papers, which are published in full in the second volume of the *Annals* of the Institute. Among these papers are discussions of sociological concepts and methods by Kovalevsky, René Worms, Steinmetz and Combes de Lestrade; of primitive society and social origins by Abrikossoff, Westermarck, Gumplowicz and Kovalevsky; of political origins and forces by Lilienfeld, Raoul de la Grasserie, Krauz and Golberg; and of crime by Tœnnies, Ferri, Garofalo and Tavares de Medeiros. These yearly volumes are indispensable to students of sociology.

The first volume of Rudolf Stolzmann's *Die sociale Kategorie in der Volkswirthschaftslehre* (Berlin, Puttkammer & Mühlbrecht, 1896) contains the introductory portion of what promises to be an important contribution to economic thought. It is not a study in sociology, but is a presentation of the imperfections in economic science that result from a failure to make the facts of society and the laws of its action a part of itself. It is in the affiliated science of economic politics that an ampler recognition of society, as an active power in practical life, has been accorded. The present volume is largely

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critical. It examines such fundamental doctrines as those of value, capital, labor, interest, wages and profits.

The second volume of Professor Pareto's *Cours d'Économie Politique* (Lausanne, 1897) discusses social evolution, production, commerce, distribution and consumption. In the treatment of these subjects the author shows an ample acquaintance with the facts of industrial life, and a special aptitude for formulating theories and stating them in mathematical terms. An exceptional interest attaches to the chapter on commerce, in which speculation and producers' coalitions are discussed, and to the chapter on economic crises. The author classifies the causes of commercial crises as subjective and objective, and thinks the chief among them is that state of the public imagination which has been rated rather as an effect of an outward commercial state. It is a delusion concerning the future that, according to Professor Pareto, acts powerfully in producing economic disorders.

If there is a case in which a student absolutely needs the aid of expository and critical studies in mastering the theoretical system of an economist of the past, it is the case afforded by the reading of Proudhon. Such criticism of Proudhon's theories was offered in the earlier volumes of Dr. Diehl's work, *P. J. Proudhon, seine Lehre und sein Leben.* The third part of the work, just issued (Jena, Gustav Fischer, 1896), completes the study by presenting an extended sketch of Proudhon's life.

In *The Problem of the Unemployed* (London, Methuen & Co., 1896), Mr. John A. Hobson comes back to an old theory which he has been pushing with energy for several years. The real cause of unemployment and of commercial crises is to him general overproduction, or underconsumption; and he thus puts himself in line with the upholders of what Bergmann in his recent *History of the Theory of Crises* calls the "naïve overproduction theory." Mr. Hobson is careful, however, to point out — and here he differs from many of his predecessors — that he does not repudiate the usefulness of individual thrift, and that he sees no remedy, as Malthus did, in the decreased consumption of luxuries by the rich. His practical conclusion differs little from that of those economists who maintain the desirability of raising the standard of life, and of thus increasing the consuming powers of the workman. Whether such a change would solve the problem of the unemployed is an open question; and we much fear that few will be converted by the author's reasoning.

An old idea has been treated without great originality by Mr. James

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Lewis Cowles, in a recent number of Putnam's "Questions of the Day," entitled *A General Freight and Passenger Post.* Starting with the assumption that the principles of railway management are essentially like those which govern the operations of the post office, the author concludes that the whole railway business should be pooled under the control of the post office, with a uniform rate irrespective of distance for each of a few classes of freight. For the last five decades, this idea has cropped out every few years, with a depressing disregard of the obvious difficulties of the scheme. Mr. Cowles, even more than his predecessors, has made no real effort to consider these difficulties.

The admirable work of Dr. Schulze-Gävernitz on *Der Grossbetrieb*, which was reviewed in this QUARTERLY, vol. vii, p. 747, has met with deserved success. It has been translated into French; and recently an English translation has appeared under the title of *The Cotton Trade in England and on the Continent* (London, Simpkin-Marshall). The translation is by Oscar S. Hall, himself an expert in cotton machinery, and first appeared in the columns of *The Textile Mercury*, where it attracted much attention. In its present form it will appeal to a wide circle of readers.

Mr. M. L. Muhleman, the deputy assistant-treasurer at New York, has compiled a volume under the title, *Monetary Systems of the World* (New York, C. H. Nicoll). It includes the important features of his earlier work on *The Money of the United States*, but adds similar statistics for other countries. Although not without minor errors in detail, — which seem almost unavoidable in a work of such range, — the book is among the best of the kind that have recently appeared, and will be found very serviceable for ready reference.

The editors of the *Handwörterbuch der Staatswissenschaften* have issued the *Erster Supplementsband* (Jena, G. Fischer, 1895). It contains many important articles. The statistics of *Aktiengesellschaften* are given, for Germany by Professor Lexis, for other countries by Dr. von Juraschek. Bank statistics are brought down to the latest date by Dr. Lexis. Universities receive extended notice by various authors. Among the more important articles are those on "Marginal Utility" and "Money Standards," by Lexis, and that on the "Colonization of Prussian Poland," by Dr. Sering. The volume is a monument of German industry and thoroughness.

The long-expected second volume of Palgrave's *Dictionary of Political Economy* has just been published by Macmillan. It includes the titles from F to M, and makes a portly volume of 848

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pages. The list of contributors includes almost all the prominent English and American economists, with a good selection from the Continent. To pick out the noteworthy articles would be well-nigh impossible, for every one will find something to his taste. To the general reader the articles on the French, German, Italian and historical schools of economics will be welcome; while the student will be especially attracted by the admirable sketches of the life and works of the major and minor English writers from the Middle Ages to the present time. It is to be regretted that a long time seems to have intervened between the writing and the publication of some of the articles. The statistics are not infrequently three or four years old, or even more; so that for practical purposes the dictionary is sometimes out of date. We must, however, be thankful for the many good things that we get.

In August, 1895, the First International Coöperative Congress was held in London. The *Report of the Proceedings*, which has recently been published, will be interesting to all students of the social problems. The subjects treated include not only coöperation, as applied to production, to distribution, to banking and to agriculture, but also profit-sharing in all its phases. The volume contains, in addition to an account of the proceedings, a valuable series of reports on the history and present state of coöperation in the ten principal countries of the civilized world. Photographs of a large number of the leading coöperators are interspersed throughout the volume.

The seventh volume of *Life and Labor of the People of London*, by Charles Booth (Macmillan, 1896), continues "Population classified by Trades," the salient features of which we have already noticed in our review of the fifth and sixth volumes. The occupations dealt with in this volume come under the general headings, "Dress," "Food and Drink," "Dealers and Clerks," "Locomotion," and "Labor." The method remains the same, and is much to be commended. Some of the trades are of peculiar interest, and afford opportunity for picturesque and graphic details — as, for instance, the butchering trade, and the uncertain but (apparently) attractive trade of the coster and street-vender. Under "Locomotion" are discussed railway employees, cab and omnibus drivers, carmen and merchant seamen. Mr. Booth himself deals with the 20,000 dockers, who have played such a striking part in the warfare of labor during the last few years.

It was a happy thought of the London Economic Club to study family life in Great Britain by investigating the details of family

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expenditure. The committee, composed of Messrs. Charles Booth, Ernest Aves and Henry Higgs, have published the result of several years' study in a monograph entitled *Family Budgets, being the Income and Expenses of 28 British Households, 1891–1894.* The tables themselves occupy only seven pages, but the introduction and the separate essays on each budget fill the remainder of the 76 pages. This marks the first attempt in England to introduce the methods of Le Play, and throws an interesting light on the real life of the working and middle classes. The committee itself frankly recognizes the obvious limitations of such an investigation, but seeks — and with success — to point out some of the lessons to be drawn from the tables.

The Massachusetts Census for 1895 contains, in vol. i, the usual population and social statistics. Among the novelties is an analysis of families according to size and composition by sex. Out of 100 families four consisted of single individuals; 16.77, of two persons; 19.45, of three; 18.12, of four; 14.28, of five; 10.26, of six; and 6.79, of seven persons to a family. Very curious is the symmetrical distribution of the sexes. Thus, of families of six persons, the largest number (20,428) is composed of three males and three females, a smaller number (14,293) of two males and four females, or (13,243) of four males and two females; a still smaller number (4367) of one male and five females, or (3410) five males and one female; and finally, there are 109 families of six males and 310 families of six females.

The Report on Indians (Washington, Census Office) is one of the volumes which suffer least from the delay in publishing the results of the eleventh census. It consists of a series of essays on the various estimates of the number of Indians (471,417 in 1822, down to 248,253 in 1890), on the policy and administration of Indian affairs, on the educational, vital and criminal statistics of the Indians; and includes detailed descriptions of the condition of the Indians in each of the states and territories. The statistical part is of necessity extremely slight and imperfect; the colored plates are many of them very bad; and the whole volume would have come more properly from the bureau of ethnology than from the census office.

The Report on Statistics of Churches in the United States at the Eleventh Census (Washington, Census Office) is a very elaborate volume, with numerous maps and diagrams showing the distribution of the members of the 143 different religious denominations in this

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country. To a limited extent the maps probably show the real condition of things — for example, that the Episcopalians congregate on the Atlantic seaboard, the Lutherans in Pennsylvania and the Northwest, the Baptists in the South, *etc.* But it is doubtful if it is advisable to rear such an elaborate superstructure upon the very weak basis of the returns made by denominational officers in regard to the number of communicants, the value of church property and other details. There is absolutely no guarantee of the correctness of such estimates, while there is every temptation to exaggerate; and the reader's sense of information gained is entirely illusory.

The *Supplement to the Fifty-fifth Annual Report of the Registrar General of England*, part i (1895), contains the regular decennial review of vital statistics for the years 1881–90. The death-rate during the decennium was 19.08 per thousand, or more than two less than in 1871–80. The expectation of life, which was, for males, 39.91 in 1838–54 and 41.35 in 1871–80, had increased to 43.66 years in 1881–90: that is, the average length of life had increased more in the ten years than in the previous period of thirty-five years. The decrease in mortality is especially marked in cases of smallpox, scarlet fever, phthisis, diseases of the respiratory system, diarrhœal diseases and enteric fever. The analysis of deaths is carried out elaborately for different diseases and localities, and by sex and age. The whole furnishes most remarkable testimony to the improvements in sanitary conditions in England.

One of the most sumptuous books of the decade is the *Revenue Laws of Ptolemy Philadelphus*, which has recently been issued by the Clarendon Press (Macmillan). During the winter of 1893–94, Professor Flinders Petrie bought from a local dealer a papyrus which turned out to be only the first of two rolls; and the second, containing the remainder of the document, was secured a year later by the editor, Mr. B. P. Grenfell, fellow of Queen's College, Oxford. Together they form a most unique exposition of Egyptian tax methods in the year 259 B.C. While the work will be of chief value to philologists and Egyptologists, it is not without great interest for the economic historian. The editor publishes the Greek text, and provides a translation, commentary and appendixes; while the introduction is written by Professor Mahaffy. Heretofore our knowledge has been limited to the salt tax, the grazing tax, the police tax and the "benevolences"; but the present documents treat primarily of the land tax, as managed by the tax-farmers, and of the oil monopoly. Some of the provisions to guard the interest of the treasury

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are ingenious, as, for example, the one mentioned on page 101. By this regulation the property-owner was to assess himself; but in case the tax-farmer objected, the latter might sell the crop and, after paying the assessed value to the owner and handing over the amount of the tax to the proper official, might keep the surplus himself. In case the proceeds of the sale did not equal the assessed valuation, the tax-farmer was still responsible for the tax to the state. It is to be hoped that he was also responsible to the unfortunate landowner. Many other interesting details might be pointed out in the work, which will be of value to historians of fiscal expedients.

A short and readable popular history of labor organizations, without pretense of originality but carefully written, is *Les syndicats professionnels*, by Ernest Mahaim (Bruxelles, Charles Rozez). The account covers the Roman colleges of artisans, the trade gilds of the Middle Ages, the trade unions of England and the various labor unions of France, Belgium and other countries. The volume contains a good general bibliography.

In the third edition of his *Land Laws* (Macmillan, 1896), Sir Frederick Pollock has tried to keep pace with the growth of legislation and the progress of historical research. The changes of most interest to students are those contained in his chapter on "Old English Customary Law" and in the appendix. A new note on "The Origins of the Manor" contains an admirable summary of the various theories about the origin of manorial tenures, *etc.* Admitting that the markmoot "is a creature of ingenious but unwarranted conjecture," the author denies that the origin of the English mediæval land system has been proved to be "to any considerable extent" Roman.

The lack of a general history of commerce in a brief and convenient form has long been felt by teachers of economic history, who have not been entirely satisfied with the little book by Mr. Gibbins. This want has now been filled for readers of French by Henri Cons, Professor at the University of Lille, in his *Précis d'Histoire du Commerce* which forms one of the works of the Bibliothèque d'Enseignement Commercial, edited by Georges Paulet (Paris, Berger-Levrault, 1896). Beginning with a sketch of the origin of commerce, the author takes up in successive divisions ancient, mediæval and modern commerce, the first volume closing with an account of the colonial system. The second volume is devoted chiefly to the present century, and gives a wide survey of existing commercial relations throughout the world. The work is clearly written and well arranged; and not the least

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valuable feature is the fifteen-page bibliography arranged by chapters. It is to be hoped that we may soon see an English translation.

Two monographs by Annah May Soule, M.L., on the boundaries of Michigan present certain facts of national importance not hitherto available for the general reader. The first, on *The International Boundary of Michigan* (reprinted from Michigan Pioneer and Historical Collections, vol. xxvi), gives a plain statement of the questions relative to the boundary between Michigan and the British possessions and of the negotiations bearing upon the definite settlement thereof. The pamphlet is amply supplied with reproductions of early maps, of which the interpretation and usefulness seem to depend entirely upon the undirected reader. In the second study, *The Southern and Western Boundaries of Michigan* (Publications of the Michigan Political Science Association, vol. ii, no. 2, May, 1896), the maps are far more helpful and instructive, and the text shows equal improvement. The involved problems are handled in a clear and adequate manner, and the work is a creditable piece of local history. The so-called "Bibliography," however, like the list of authorities in the preceding work, is crude.

To the investigator in the field of Texan history the work of Judge C. W. Raines, *A Bibliography of Texas* (Austin, Gammel Book Co., 1896), will be of inestimable value. Hitherto there has been no reliable guide for this but partially explored field. The body of the book is taken up with an enumeration in alphabetical order of at least the chief sources of Texan history, together with much other matter written in Texas, about Texas, or by Texan authors. There are three valuable appendixes: the first is descriptive of collections of laws, law books, decrees, constitutions, journals of conventions and legislatures, and other matter of a similar nature; the second is descriptive of maps, archives, private collections, *etc.;* the third is devoted to the Texas Veterans and the Daughters of the Republic. The work has many defects: errors are abundant; titles are frequently quoted incorrectly, particularly in the case of French and Spanish works; and, in many instances, the author has allowed sectional prejudice to crop out in his criticisms. These deficiencies, however, are atoned for by the good qualities of the work, which is, on the whole, perhaps the most important contribution that has yet been made to the history of Texas.

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